

# THE DOCTRINE OF SEPARATION OF POWERS IN INDIA: A LEGAL STUDY

Geetika Bhatia

Student

BBA.LL.B.(Hons.)-5<sup>th</sup> year

Law College Dehradun, Dehradun, India

**Abstract:** The present article is an attempt to analyse the application of the doctrine of separation of power as envisaged under the constitution of India and a legal study of relationship between the three organs of the government. The authors also study the judicial view on the doctrine of separation of powers. In the present study, a comparative study of the scheme of the separation of powers in Indian Constitution with the American Constitution is done and also various Indian and foreign cases have been discussed where the courts gave their view upon the position of the doctrine of the separation of powers and the Supreme Court also recognised the doctrine as the basic feature of the constitution of India. Since in a democratic setup due to the complexity of functions, overlapping in the jurisdiction of the three organs is bound to occur. However, the organs must keep a check upon themselves so that they do not hamper the functions of the other organs of government. In this context that the author felt to legally study the application of the doctrine of separation of powers.

## I. INTRODUCTION

*“Power corrupts and absolute Power tends to corrupt absolutely.”* -Lord Acton<sup>1</sup>

In India, The three organs of the government viz. the legislative, the executive and the judiciary represent the will of the people and plays a vital role in the smooth running of the democracy. The legislature is the law making body and enacts the laws of the state, the executive is the implementing body for the enforcement of laws made by the legislature and the judiciary is the adjudicatory body and implements the laws and the constitution. The roles and functions of these three organs are interlinked and therefore overlap with each other. This division of the sovereign power among three wings of the government is called as the ‘Separation of power’. The Doctrine of Separation of power is a part of evolution of democracy. In a democratic setup, the three organs should be separate, distinct and sovereign in their own demarcations so that one organ does not trespass into the jurisdiction of the other. Aristotle was the one who perceived and developed this doctrine initially. Thereon other philosophers and political theorists like Montesquieu, John Locke and James Harrington differentiated Constitutional functions as legislative, executive and judicial. The basic presumption of all the theories given by the philosophers was in relation to the protection of the people from the oppression of the government because if the power is not differentiated and placed in the hands of the same authority then the liberty of the people will be hampered.<sup>2</sup>

Under the U.S. Constitution, this theory is not applied absolutely, as the judiciary is given a special position. As Hughes C.J., once said<sup>3</sup>, *“We are living under a Constitution, but, the Constitution is what the judges say it is.”* Although the Constitutional makers adhered to incorporate this doctrine of separation of powers strictly but, in reality it has been seen that the strict differentiated of sovereign power in the form of three distinct spheres is not possible. Therefore, the constitutional provisions are based on the principle of checks and balances. In *William Marbury v. James Madison*<sup>4</sup>, the U.S Supreme Court offered a new dimension to the doctrine of Separation of Powers. Lord Atkin also contributed to the evolution of this doctrine rendered in his decision in *Liver Sidge v. Anderson*<sup>5</sup>.

In India, it is a matter of political debate whether there should be a complete separation of power or there should be a well-co-ordinated system of division of power. The Constitution makers were able to foresee that if sovereign power is vested in the hands of a single organ then it could lead to unrest and conflict in the society, which could curtail the essence of democracy itself. Accordingly, they had a vision that the three organs of the State would need to be in consonance with each other, so that they could act in a smooth and coordinated manner within their own spheres, in the interest of the nation. The Indian Constitution does not give exclusive powers or importance to any organ and keeps each of them at the same stage.<sup>6</sup>

However, since few years now, it is being seen that the boundaries showing the purview of the three organs of the State have got and are getting obscured, as judiciary seems to be of the view that it has the authority by way of 'judicial activism' to exercise powers, which are probably assigned by the Constitution for the legislative or the Executive and are clearly out of the sphere of the judicial capacity. It is also to be noted that the hon'ble Supreme court itself construed that the doctrine of separation of power is a part of the basic structure of the Constitution. In such a case, no other organ of the State can encroach into the area demarcated by the constitution, unless permitted by the Constitution itself, and otherwise it shall be the violation of the basic structure doctrine.

Therefore, it is clear that all the organs must function in consonance with the constitutional mandate and should not be strive to function any source of powers or authority not permitted just to expand its own jurisdiction, which will give rise to unwanted conflicts and affect the harmonious functioning of the different organs of the state.<sup>7</sup>

Indian Constitution provides for a federal government with strong inclination towards centre. In terms of legislative relations between the union and the states, union is vested with overriding legislative powers over states i.e., in case of conflict between the central and state law, the central law shall prevail. The founding fathers of Indian Constitution deliberately save a unitary bias to the federal system of government as they thought a strong centre was necessary to curb the danger possessed by fissiparous tendencies and danger of disintegration with the passage of time. When different party rule come in centre and states, states have started alleging that there is encroachment on the autonomy of states and made demand for greater autonomy. This rising penal of regionalism, thus, has created a conflict between union and states, which makes it imperative not only to recognize the problem but also, to find solutions at any early stage.<sup>8</sup>

Thus, we can say that these organs of the government are allowed to exercise their functions but within certain limits. These limits are set by the constitution and the same also prescribes the encroachment of one organ in the jurisdiction of the other. The Rule of Law is the fundamental principle upon which the Constitution of India is based, hence the quality of governance is evaluated on the touchstone of efficacy of the legislature, transparency of the executive and the strength of Judicial mechanism.

So as to legally analyse the application of the doctrine of separation of power, a comprehensive study of the theory, understanding of the doctrine as used in our system of governance along with the landmark cases is to be done.

## II. THE DOCTRINE OF SEPARATION OF POWER

The concept of the separation of power can be traced back in ancient Greece which further became a part of the Roman Republic Constitution. The Aristotle (384-322 BC) in his book "The Politics" also discussed about presence of the tripartite element in the constitution for the smooth running of the nation. The expression "separation of powers" was coined by Montesquieu, an 18<sup>th</sup> century French philosopher in his publication, *Spirit of the Laws*, which is considered as one of the best works in the history of jurisprudence and political theory.<sup>9</sup>

According to Montesquieu, if the power is delegated to a single organ then it could cause tyranny. Thus rather than placing power to a single organ, the power should be divided among the three organs of the government viz. The legislature the executive and the judiciary. As a result, the three organs will be able to function independently and there shall be no encroachment by one in the spheres of another, therefore harmony can be reached for the smooth running of the nation.<sup>10</sup>

This theory says that there are three kinds of power: Legislative, executive and judicial and each of these powers must be vested in distinct organs because if all these powers, or any two of them, are consolidated in the same organ or authority, there can be tyranny. Thus the basic concept of the separation of powers would mean as explained by Wade and Philips<sup>11</sup>:

- That the same persons should not form part of more than one of the three organs of government.
- That one organ of government should not control or interfere with the work of another.
- That one organ of government should not exercise the functions of another.

For example, if legislative and executive powers are united, there is probability that the concerned may enact laws tyrannically and execute them in an arbitral manner. Again, there shall be no liberty if the judiciary is not separated from the legislature and the executive. As if judiciary joined the legislative

then the people would be exposed to arbitrary control, for the legislator will become the judge. In case judicial power is joined with the executive power, the judge might behave with violence and oppression.

Therefore, the Doctrine of Separation of Powers, aims at separating the sovereign power and disseminating it such that oppression by the government may be prevented entirely as equal power is vested in three separate organs which will act as a check and balance for each other. This doctrine is a way to protect the liberty of the people and maintain harmony among the organs of the government.

### III. SEPARATION OF POWER UNDER THE INDIAN CONSTITUTION

By looking at the provisions of the Constitution of India, one may be inclined to say that the doctrine of separation of powers is accepted in India. Under the Indian Constitution, the executive powers are with the President, the legislative powers with the Parliament and the judicial powers with the judiciary. The President holds his office for a prescribed period. His functions and powers are enshrined in the Constitution itself. The Parliament is competent to make any law subject to the provisions of the Constitution and there is no other limitation on its legislative powers. Similarly, the judiciary is independent in its field and there can be no interference with its judicial functions either by the executive or by the legislature. At the same time, the Court also cannot derogate to itself any function, which belongs to the sphere of the other two branches, namely, the executive and the legislature. The Supreme Court and High Courts are given the powers of judicial review and they can declare any law passed by the Parliament or Legislature as ultra vires or unconstitutional.<sup>12</sup>

But, if we carefully study the provisions of the Constitution, we learn that the doctrine of separation of power is not accepted in India as a whole in its true sense. The Constitution itself does not provides for any provision with respect to the division of power among the three organs of the State. Though, under Articles 53(1) and 154(1) of the Constitution, the executive powers of the Union and of the States is vested in the President<sup>13</sup> and the Governors<sup>14</sup> respectively, but there is no provision providing for the vesting of the legislature and judicial functions upon the other two organs. The President has wide legislative powers. He can issue ordinances, make laws for a State after the State legislature is dissolved, adopt the laws or make necessary modifications and the exercise of this legislative powers is immune from judicial review<sup>15</sup>.

He performs judicial functions also<sup>16</sup>. He decides disputes regarding the age of retirement of a judge of High Court or the Supreme Court and cases of disqualification of members of any house of Parliament. Though the Parliament exercises legislative functions and is competent to make any law not inconsistent with the provisions of the Constitution, many legislative functions are delegated to the executive. In certain matters, the Parliament exercises judicial functions also. Thus, it can decide the question of breach of its privilege and, if proved, can punish the person concerned. In case of impeachment of the President, one house acts as a prosecutor and the other house investigates the charges and decides whether they were proved or not. The latter is a purely judicial function.<sup>17</sup>

Though, judiciary exercises all judicial powers, at the same time, it exercises certain executive or administrative functions also<sup>18</sup>. The High Court has power to supervise all the subordinate courts and tribunals. The Supreme Court and High Courts have also powers to transfer cases. The High Courts and the Supreme Court have legislative powers also and they frame rules regulating their own procedure for the conduct and disposal of cases<sup>19</sup>.

Thus, the doctrine of separation of powers is not accepted fully in the Constitution of India. We can say that the doctrine of separation of powers is undesirable and impracticable in its strict sense and therefore it has not been fully accepted in any of the country. In theory under the constitution of the United States of America the doctrine of Separation of powers has been strictly adopted but their also gradually the Supreme Court is relaxing the policy. In India also on casual study of the constitution it can be said that India has adopted the doctrine of separation of powers but in reality it is not show. Practically in some or the other way the three organs have to perform the function of one another. For example the legislative delegate some powers to executive, thus executive the function of the legislature. In this way the parliament other than making laws also have judicial powers which it can exercise when its contempt take places.

### ➤ THE EXECUTIVE AND THE LEGISLATURE IN THE INDIAN CONSTITUTION

Soon after the Independence, the Supreme Court recognized that the Indian Legislature had a distinctly superior position vis-à-vis the other organs of the State. Justice S.R. Das observed in the famous case of *A.K.Gopalan v. State of Madras*<sup>20</sup> “Although our Constitution has imposed some limitations... [It]



has left our Parliament and the State Legislature supreme in their respective fields. In the main, subject to limitations...our Constitution has preferred the supremacy of the Legislature to that of the Judiciary...and the Court has no authority to question the wisdom or policy of the law duly made by the appropriate Legislature...and this is a basic fact which the Court must not overlook.”

Article 52 and 53 of Indian Constitution:

*Art. 52 says that there shall be a President of India.*

*Art. 53 says that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.*

*Art. 53(3) says that nothing in this article shall-*

*(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or*

*(b) prevent Parliament from conferring by law functions on authorities other than the President.*

All the executive actions of the Union government are taken in the name of the President. He appoints the officials of the Prime Minister, Central Government and Council of ministers at the advice of the Prime Minister. Chief Justice and the judges of Supreme Court and High Court are also appointed by him at the advice of the Chief Justice of India. He appoints the chairman of UPSC, Controller and Auditor general of India, Attorney General of India, Chief Election Commissioner and other Election Commissioners, Governor of the states, members of Finance Commission and ambassadors.<sup>21</sup>

Judicially, The President enjoys the legal immunity. He has power to commute, reprieve, or remise punishment. The President can also remove the judges by two-third majority of the members present in two houses. If a question of law or a matter of public importance arises before the President, he can take the advisory opinion of the Supreme Court. However he may or may not accept that opinion.<sup>22</sup>

The President has power to summon both the houses of the Parliament and can dissolve the Lok Sabha but he can use this powers only after according to the advice of the Council of Ministers headed by the Prime Minister. At the beginning of the first session of the Parliament each year, the inaugural speech is delivered by the President where he showcases the new policies and schemes of the government. A bill passed by the Parliament becomes a law only after the assent of the President. He has power to return a bill back to the Parliament for reconsideration but this not so in case of money bill. But in case the Parliament sends it back for the second time after reconsideration, the President is bound to give his assent to the bill. The President can also pass ordinances when the Parliament is not in session but must get it ratified within six weeks<sup>23</sup>.

However, by the above study it cannot be concluded that the doctrine of separation of powers does not apply to the relationship between the executive and legislature. Other than holding such express powers, there are sure hazy areas which require a superior utilization of the doctrine. It is vital to keep up the division of power between the executive and the legislature. Many a times Legislators exercise their check over the executive via various ways, such as through their power to head executive boards and agencies of various kinds, the capacity to participate in executive committees which award contracts or select beneficiaries of various welfare schemes. Secondly, the grant of an annual fund to the legislators to carry out activities in their constituency gives them executive powers in disguise. Though, the President appoints the Council of Ministers in consultation with the Prime Minister, he generally acts on the aid and advice of the Council of Ministers. This truly represents that the area within which he enjoys independence is very limited and nominal. Article 74(1) makes it clear that the executive head has to act in accordance with the aid and advice given by the cabinet. However, certain constitutional provisions also provide for Powers, Privileges and Immunities to the MPs, Immunity from judicial scrutiny into the proceedings of the house, etc. Such provisions are thereby making legislature independent, in some or the other way.<sup>24</sup>

## ➤ THE EXECUTIVE AND THE JUDICIARY IN THE INDIAN CONSTITUTION

The connection between the executive and the judiciary has been a question of fragile inquiry. A democratic society which is administered by Rule of law always require for detachment of the executive from the judiciary. The rule of law is constantly exposed to the peril of being infringed by the executive. It is in this context that the appropriate functioning of a democratic government requires a clear differentiation of the two organs. The primary function of the judiciary is the administration of justice and justice can never be appropriately administered without the fear or favour unless there is a clear separation of

the judiciary from the executive. Article 50 of the Constitution provides that “*The State shall take steps to separate the judiciary from the executive in the public services of the State.*” The clear intention of the framers of the Constitution was to achieve changes wherever possible and shall be done promptly, without any delay, and where immediate execution of this principle is not possible, it will in any case be acknowledged as a basic commitment.<sup>25</sup>

Hypothetically, separation of judiciary from the executive is always a welcome step. The aim is always to guarantee that the judiciary does not decide cases under the influence of the executive, rather follows the principle of Rule of Law. But, the real issue comes in practicality where its division is a problematic concern. The role of judiciary under the British Rule had always cautioned the framers of the Indian Constitution of the inherent limitations of the judiciary. These limitations of the judiciary pose a challenge to the separation of the two organs. Thus, it is submitted that it is difficult to achieve independence of judiciary from the executive as the ever increasing power of the executive is likely to tamper the balance on which the Indian Judiciary rests.<sup>26</sup>

Now-a-days, there are various instances where the judiciary has intervened in the subjects which are entirely within the sphere of executive. In *People’s Union for Civil Liberties v. Union of India*<sup>27</sup> case, the Court observed that rule making is the function of the executive.

The Indian Judiciary is now heading from Judicial Activism to Judicial Adventurism<sup>28</sup>. It is indisputable that Courts cannot run the government. If it tries to do that it would hamper the very purpose of the Constitution.

#### ➤ **THE JUDICIARY AND THE LEGISLATURE UNDER THE INDIAN CONSTITUTION**

The provisions of the Chapter IV of Part V of our Constitution which deals with Union Judiciary showcases a relationship between the Judiciary and Legislature. Article 122 of the Indian Constitution provides that the Court shall not call validity of any proceedings in Parliament in question on the ground of any alleged irregularity of procedure whereas Article 212 provides that the Court shall not enquire into the proceedings of the Legislature. But certain legal irregularity has been felt in the ongoing past. The most conspicuous being the acclaimed Jagdambika Pal instance of 1998 involving the Uttar Pradesh Assembly and the Jharkhand Assembly instance of 2005. The Interim Order of the Supreme Court in both the cases is a reasonable infringement of the doctrine of separation of powers between the Judiciary and the Legislature. The judiciary reprimands Legislature for not doing anything beneficial in the course of recent decades, while Legislature blames Judiciary for carrying out the responsibility of the governing body.<sup>29</sup>

There are a few occurrences that demonstrate that there has been a tilt of revision control for Parliament and at times Judiciary. The 42nd Amendment Act of the Parliament got an exceptional change in the provisions of the Constitution. Under this amendment Article 368<sup>30</sup>, which gives amending capacity to the Parliament, was modified to the point that any further change of the Constitution would be immune from being addressed in Court of law. The power tilted in favour of the legislature. Ultimately in *Minerva Mills v. Union of India*<sup>31</sup>, Supreme Court ruled that the ‘judicial review’, being a basic feature of constitution, cannot be taken away by the Parliament by making amendment of the Constitution. Aside from this, there a few examples where the judiciary has played out the role of the legislative without considering the functional troubles and money related imperatives. It has gone to the degree of framing rules as well as the policies.

#### **IV. JUDICIAL APPROACH ON THE DOCTRINE OF SEPARATION OF POWER**

There had been times where the Indian judiciary has faced tough challenges in preserving and maintaining the Doctrine of separation of powers and it has in the process of preservation of the above said Doctrine has delivered landmark judgments for the past 6 decades which clearly showcases the independence of judiciary as well as the success of judiciary in India.

The first landmark judgment by the judiciary in relation to Doctrine of Separation of powers was in *Ram Jawaya v State of Punjab*<sup>32</sup>. The court in the above case opined that the Doctrine of separation of powers was not fully accepted in India. Mukherjee J. observed that The Indian constitution has not recognized the doctrine of separation of powers absolutely but the functions of the different organs of the government have been appropriately divided.

Later in *I.G. Golak Nath v State of Punjab*<sup>33</sup>, Subba Rao, C.J. gave opinion that the constitution brings into existence distinct constitutional entities viz, the union, the state and the union territories. Further it makes three major forces of powers viz, the Legislature, the Executive and the Judiciary.

It demarks jurisdiction precisely for them and anticipates them to perform their functions without going beyond their limits i.e., they must function within the spheres demarcated to them.

This opinion of the court clearly shows the change in the view of the judiciary after the observation in the case of *Ram Jawaya v. State of Punjab* related to the said doctrine.

Thereafter, in the biggest land mark judgment delivered by the Hon'ble Supreme Court in *Keshvananda Bharti v. Union of India*<sup>34</sup>, the court was of the opinion that the basic features of the constitution were immune to the amending powers held by the legislature. And hence, any amendment which is likely to temper with these essential features will be struck down and held to be unconstitutional. Beg, J. held that separation of powers is a part of the basic structure of the constitution. None of the three distinct organs of the State can take over the functions assigned to the other.

Then in *Indira Gandhi Nehru v. Raj Narain*<sup>35</sup> case in which the dispute with respect to the election of the Prime Minister was pending before the Supreme Court, the Court was of the opinion that adjudication of a specific dispute is a judicial function which parliament, even under amending powers of the constitution, cannot exercise i.e. the legislature does not have the power to perform functions which the other organ is ought to, for otherwise there will be tyranny as there will be overlapping of the jurisdictions demarcated of the three organs of the democratic republic.

Justice Pathak in *Bandhua Mukti Morcha v. Union of India*<sup>36</sup> said:

“It is a common place that while the Legislature enacts the law the Executive implements it and the Court interpret it and, in doing so, adjudicates on the validity of executive action and, under our Constitution, even judges the validity of the legislation itself. And yet it is well recognized that in a certain sphere the Legislature is possessed of judicial power, the executive possesses a measure of both legislative and judicial functions, and the Court, in its duty of interpreting the law, accomplishes in its perfect action in a marginal degree of legislative exercise. Nonetheless a fine and delicate balance is envisaged under our Constitution between these primary institutions of the State”.

Also in *I.R. Coelho v. State of Tamil Nadu*<sup>37</sup>, S.C. took the opinion given by the Hon'ble Supreme Court in *Kesavananda Bharati* case regarding the basic structure doctrine and held that the Ninth Schedule of the Constitution is violating the above said doctrine and hence from now on the Ninth Schedule will be amendable to judicial review which also makes it a part of the basic structure doctrine.

From the above few case laws starting from *Ram Jawaya v. State of Punjab* in 1955 to *I.R. Coelho v. State of Tamil Nadu* in 2007, there has been a drastic change of opinion as in the beginning the court was of the opinion that the Doctrine of Separation of Power is not accepted in the constitution of India but with the passage of time the opinion of the Supreme Court also changed and it accepted the Doctrine of the Separation of Power as the basic feature of the constitution.

## V. CONCLUSION

Constitution is the Grundnorm that everyone must follow. No organ ought to go beyond the role as doled out to it by the Constitution. It is the commitment of the Judiciary, Executive and Legislature to entirely hold the main essence and essential features of the Constitution. It is unnecessary to criticize the Constitutional Plan of differentiation of powers when the present provisions are not being religiously watched. Without a doubt, there is a requirement for a progressively vigorous interpretation and our dynamic Constitution has enough space to accommodate the equivalent. The ambition of the Constitutional framework should be ensured which can be preserved just when brought into reality. There is a noteworthy gap between the Constitutional arrangement and routine with regards to Separation of forces. It must be crossed over when all the three organs move a step ahead than all the various democracies of the world by working in sheer concordance. By not doing as such they are disregarding the privileges of the general population. The founding fathers of the Constitution had additionally characterized the position and the powers of the three organs of the state. They had understood that government being a natural element could never have the capacity to accomplish total partition of forces. Along these lines, going for a total partition of forces is comparable to talking in vacuum. In any case, that does not imply that each branch has selective powers rather they have their Constitutional breaking points to be clung to. The soul of the Constitution isn't on selectiveness however on shared coordination. The Executive has become extremely ground-breaking in the ongoing time that has surely driven them to a wide abuse of powers. Aside from the check kept on them by the Judiciary and Legislature, media and NGOs have played a noteworthy role in uncovering the offenses of Government



functionaries. At last, the aim of the three organs is to secure the privileges of the general population. In a democratic setup, vigilant frame of mind of the general population can help guaranteeing an appropriate working and anticipate self-assertive exercise of the power. The three organs must find a sense of contentment for our prosperity.

In India, we pursue a partition of functions and not of Separation of powers. In spite of the fact that in India strict partition of forces like in United States of America isn't pursued but, the rule of 'checks and balance', exists as a part of this doctrine. Therefore, none of the three organs can usurp the basic elements of the organs, which establish a part of the 'basic structure' doctrine to such an extent that, not even by altering the Constitution and if any such alteration is made, the court will strike it down as unconstitutional.

## VI. SUGGESTIONS

After the abovementioned study, the author gives following suggestions about the research work on the legal study of the doctrine of separation of power:

- In modern times, there's increase in administrative power, so judicial control is important to be maintained.
- Judicial activism should be used in the welfare of the country.
- The liability of the state should be maintained by way of legislations.
- There must be strict code of conduct for the executive.

<sup>1</sup> Available at: <http://www.legalserviceindia.com/article/I16-Separation-Of-Powers.html> (last visited on March 13, 2019).

<sup>2</sup> I.P. Massey, *Administrative Law* 28 (Eastern Book Company, Lucknow, 6<sup>th</sup> edn., 2005).

<sup>3</sup> Charles Evans Hughes, *Addresses* 185 (2<sup>nd</sup> edn., New York 1916).

<sup>4</sup> (1803) 2 Law Ed 69: 1 Cranch 138.

<sup>5</sup> (1942) AC 206.

<sup>6</sup> 3 *International Journal of Scientific Research Publications* (Nov., 2013).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Supra* note 2.

<sup>9</sup> C.K. Thakkar, *Administrative Law* 20 (Eastern Book Company, Lucknow).

<sup>10</sup> C.K. Takwani, *Lectures on Administrative Law* 31 (Eastern Book Company, Lucknow, 2008).

<sup>11</sup> *Ibid.*

<sup>12</sup> Union of India v. Jyoti Prakash, AIR 1971 SC 1093.

<sup>13</sup> Art.53 (1), Constitution of India.

<sup>14</sup> Art.154 (1), Constitution of India.

<sup>15</sup> Art.356, Constitution of India.

<sup>16</sup> Art. 105, Constitution of India.

<sup>17</sup> M.P Jain, *Indian Constitutional Law* 56 (Wadhwa and Company, Nagpur, 5<sup>th</sup> edn., 2005).

<sup>18</sup> Art.227, Constitution of India.

<sup>19</sup> Arts. 145 & 225, Constitution of India.

<sup>20</sup> 1950 SCR 88.

<sup>21</sup> *Supra* note 6.

<sup>22</sup> Dr. APJ Abdul Kalam, "Harmonious Relationship among Legislature, Executive and Judiciary", 32 *Indian Advocate* (2005).

<sup>23</sup> *Ibid.*

<sup>24</sup> Article 74(1), Constitution of India.

<sup>25</sup> J.C.Khurana, "Separation of the Judiciary from the Executive", 3 *Journal of Bar Council of India* (1974).

<sup>26</sup> *Ibid.*

<sup>27</sup> 1997 1 SCC 301.

<sup>28</sup> Somnath Chatterjee, "Separation of Powers and Judicial Activism in India", 34 *Indian Advocate* (2006).

<sup>29</sup> *Supra* note 6

<sup>30</sup> Article 368, Constitution of India.

<sup>31</sup> A.I.R. 1980 SC 1798.

<sup>32</sup> A.I.R. 1955 S.C. 549.

<sup>33</sup> A.I.R. 1967 S.C. 1643.

<sup>34</sup> AIR 1973 SC 1461.

<sup>35</sup> AIR 1975 SC 2299.

<sup>36</sup> 1984 3 S.C.C. 161.

<sup>37</sup> AIR 2007 SC 861.

