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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

JUDICIAL ADVENTURISM- AN ANALYSIS WITH REFERENCES TO MODERN TRENDS WITH THE SEPARATION OF POWERS

AUTHORED BY - AISHWARYA SINHA

ABSTRACT

In the early 2000s, the country was demanding the judiciary to take an overview of the actions of the executive and the legislature. Following this, the judiciary had spun a thrill in hearts of Indians by its various extraordinary judgments which ultimately gave way for the coining of the term judicial activism.

From the splendid judicial activism to the now dawning judicial adventurism; a study has become necessary to know whether it is actually harming the separation of powers enumerated in the Constitution. The desires of the makers of the Constitution were like the mirror of the ways in which the people do not have to go through any further sufferings after the British Rule; which hardly followed the separation of powers.

The researcher is interested in conducting this research to analyse why constitution is the basis of all we know as law and the judiciary cannot, alone, be sufficient to weed out all social evils as well as other evils not otherwise understood by the other organs of the Government. This is the one of the foremost reasons why judiciary had stepped into judicial adventurism. Another analysis that we are trying in this paper is whether this judicial adventurism is actually leading to breaking the nerve of separation of powers in the Constitution.

Key Words: Separation of powers, Constitution, judicial overreach

INTRODUCTION

Vice President Jagdish Dhankhar has lately remarked and was furious that the judiciary was going beyond its constitutional bounds.¹ Referencing what has happened in recent times it was conveyed that in the past, judges have only communicated through their rulings but it does not

¹ 'Parliament is Supreme': VP Dhankhar Renews Attack on Judiciary over Powers, Times of India (Apr. 22, 2025)

remain the same now due to wide publicity. The best scenario is for the executive branch to function as the Constitution intended, the legislature to function from parliament, and the judges to operate from their courtrooms.

According to the Vice President; the President of India and her appointees, the governors, take an oath to uphold and defend the constitution along with judges, MPs, ministers and the prime minister. In the exercise of its authority, the Supreme Court may issue any decree or order that is required to provide full justice in any case or matter that is pending before it. Any such decree or order will be enforceable throughout India in accordance with any laws passed by Parliament and, in the absence of such provisions, in accordance with any order issued by the President².

With regard to the entire Indian territory, the fact that the Supreme Court has the absolute authority to issue any order for the purpose of obtaining someone's attendance, locating or producing any documents, or looking into or punishing any contempt of itself, subject to the provisions of any law passed by Parliament in this regard "has turned into a nuclear missile against democratic forces," according to the vice president. He said that Parliament alone has the power to punish judges and that only the President can select them³.

But one of the most fundamental questions that was raised was that:

“Are we entering an era of governance-by-judicial-decree? Are judge-made laws going to be the new normal?”

The Vice President slammed the Court, saying, “The President being called upon to decide in a time-bound manner, and if not, it becomes law. So, we have judges who will legislate, who will perform executive functions, who will act as super Parliament, and absolutely have no accountability because the law of the land does not apply to them.”⁴

RESEARCH OBJECTIVES

The objective of this research is to do a causal analysis of the powers of Supreme Court and the way its recent decisions have had an impact on the separation of powers and appraise the necessary analysis on this issue. The researcher aims to explain how far is the separation of powers important for India and how the various decisions of the judiciary impact its existence.

² Ibid

³ Ibid

⁴ Ibid

The aim of this research is to recommend measures that can be incorporated into the policy decisions of the government and assist the state in better responding to the aim of the Constitution.

RESEARCH QUESTIONS

- Whether judicial adventurism is adversely impacting the separation of powers?
- Whether the recent case of decision on the Governor an overreach of judicial power?
- To what extent should judiciary indulge in judicial activism instead of judicial adventurism?

RESEARCH METHODS

The research follows doctrinal methods where data collected from statutes has been appraised and data from quality papers published on the subject matter by eminent scholars have been taken into consideration to undertake an analytical research. Critical analysis of the existing literature and statutes is conducted to do a gap analysis and identify the challenges on the subject matter of the research.

LEGISLATIVE PROVISIONS AND IMPORTANT TERMS

Article 200 specifies that when a bill is introduced by a state's legislative assembly or, in the case of a state with a legislative council, by both houses of the legislature, the bill is presented to the governor, who must either declare his or her assent to the bill, withhold his or her assent, or reserve the bill for the president's consideration⁵.

If the bill is not a money bill, the governor may return it as soon as possible after it is presented to him for assent, along with a note asking the House or Houses to reconsider it or certain of its provisions, especially the need to introduce any amendments he may suggest in his recommendations. The House or Houses will then reconsider the bill appropriately, and if the bill is passed again by the House or Houses with or without amendment and then presented to the governor for assent, the governor will not refuse to assent to it.⁶

With the additional caveat that the Governor will not approve any bill that, in the Governor's

⁵ INDIA CONST. art. 200

⁶ Ibid

view, would, if it were to become law, so deprive the High Court of its authority as to jeopardize the role that the Court is intended to fulfil by this Constitution, but will instead hold it for the President's consideration⁷.

SEPARATION OF POWERS

The "separation of powers" idea is based on a generally acknowledged principle, although each nation has a different level of separation. Sometimes it might be challenging to categorize powers as legislative, executive, and judicial. Since members of the Cabinet are members of the legislature, full separation of the legislative and executive branches is impossible in constitutions that allow for parliamentary governance. This combination of the executive and legislative branches is thought to be essential to the smooth operation of parliamentary democracy⁸.

A direct conflict with the Indian government has resulted from the Supreme Court of India's assertion of its power to order the President of India to resolve all outstanding issues before her office within a specific time frame.

Article 142 talks about that the Supreme Court may, in the course of exercising its jurisdiction, issue any judgment or order necessary to ensure complete justice in any case or subject that is currently before it. According to any laws approved by Parliament and, in the absence of such provisions, in line with any order issued by the President, any such decree or order will be enforceable across India.

Subject to the provisions of any law passed by Parliament in this regard, the Supreme Court shall have the absolute authority to issue any order with respect to the entire Indian territory in order to obtain someone's attendance, locate or produce any documents, or investigate or punish any contempt of itself⁹.

⁷ Ibid

⁸ P.M. Bakshi, Comparative Law: Separation of Powers in India, 42 A.B.A. J. 553, 553 (1956), <http://www.jstor.org/stable/25719656>.

⁹ INDIA CONST. art. 142

JUDICIAL ACTIVISM

The Constitution has conferred jurisdiction on the Supreme Court and the High Courts to enforce fundamental rights. In addition, Article 142 of the Constitution confers on the Supreme Court the power to pass any order as is necessary for doing complete justice in any cause or matter pending before it and such order shall be enforceable throughout the territory of India. The Court has been invoking this power for the effective enforcement of fundamental rights. The Supreme Court has, over the years, interpreted the human rights incorporated in Part III of the Constitution liberally, and for securing their effective enforcement adopted innovative methods which may at times appear to trespass on the legislative and executive fields.

For instance, the right to life guaranteed by Article 21 the Constitution has been interpreted as the right to life free from environmental pollution. By issuing a series of directions in a public interest litigation and regular monitoring of their implementation, the Court has brought down air pollution in Delhi, the Capital of India. The Court ensured that all public transport vehicles are run using compressed natural gas as fuel instead of diesel. Strict adherence to the principle of separation of powers would not have achieved such beneficial results¹⁰.

The need of judicial activism arose because of the rampant white-collar crimes by the other organs of the government; when the parliament and the executive failed in their respective duties and the public issues which were urgent were being cleverly maintained by the public interest litigation.

JUDICIAL ADVENTURISM OR JUDICIAL ACTIVISM

"Adventurism" is defined by Webster as "improvisation or experimenting in the absence of or in defiance of established plans or principles." Judicial adventurism is the term for when a judge interprets the law in a way that increases people's rights or when they establish new, previously unacknowledged legal principles or regulations but it extends to the part when a judge or panel of judges go beyond their normal responsibilities of interpreting and applying the law to make important policy choices or modifications that are not expressly required by the law or the Constitution, this is known as judicial adventurism.

¹⁰ R.P. Bhatia, *Evolution of Judicial Activism in India*, 45 **J. Indian L. Inst.** 262 (2003), <http://www.jstor.org/stable/43953414>

Judicial adventurism can be controversial since it may be interpreted as a judge going beyond their authority and possibly interfering with the legislative branch's function, which is in charge of formulating public policy. Advocates of Judicial Adventurism contend that when laws and policies have not evolved to reflect shifting societal norms and conditions, it is imperative to uphold justice and safeguard individual rights. Opponents contend that it compromises the democratic process, may result in ambiguity in the legislation, and may have unforeseen repercussions. The Supreme Court is in a unique position since it can review laws that have been passed by state legislatures as well as the federal government.¹¹

When the judiciary goes beyond its constitutional bounds and frequently meddles in the affairs of the legislative or executive departments, it is referred to as judicial adventurism, or judicial overreach¹². The balance of power in a democratic society may be upset if policy decisions or legal interpretations are made in ways that are not expressly required.

The extreme kind of judicial activism is judicial adventurism. It indicates a circumstance in which the judiciary oversteps its bounds and encroaches on the legislative or executive branches, upsetting the balance of power among the three branches of government.

In one of its major cases of *State of Tamil Nadu v. K Balu & Anr.*¹³; the Supreme Court's three-judge panel ordered states and union territories to refrain from issuing liquor sales licenses along state and federal highways. The court also mandated that no liquor store be situated within 500 meters of a highway. The Court did not provide the legal basis for its authority to issue the directives it did, although acknowledging judicial review at the outset of its ruling.

But the other fact cannot be ignored that alcohol regulation is a state matter, the state legislature has exclusive authority to create legislation pertaining to its enforcement. However, the Supreme Court has interpreted Article 142 of the Constitution to demonstrate its authority to halt measures pertaining to alcohol. However, Article 21¹⁴ was the main point of contention for the Court, which noted that "the court is not fashioning its own policy but enforcing the

¹¹ Hemant Singh, *The Judicial Adventurism Under the Realm of Judicial Review in India: A Critical Analysis*, 13 *TY* 3971 (2024).

¹² Sukumar Mukhopadhyay, Power of Supreme Court to Intervene in Executive Policy, 46 *Econ. & Pol. Wkly.* 17 (2011), <http://www.jstor.org/stable/23017753> (last visited July 8, 2025)

¹³ (2017) 2 SCC 281

¹⁴ INDIAN CONST, art 21

right to life under Article 21 of the Constitution based on the considered view of expert bodies. Article 47 of the Indian Constitution, which is a part of the Directive Principles of State Policy (DPSP), requires the state to improve public health and raise the standard of living and nutrition of its citizens. The Court may also take its turn to circumvent its own regulations, even if it is not authorized to do so. In particular, it pushes the government to work toward outlawing the use of drugs and alcohol that are hazardous to one's health, unless it is for medical reasons. However, it is the responsibility of the legislature to advance this and create and uphold laws that will genuinely benefit the public, not the courts¹⁵.

One of the other cases showing judicial overreach is Fox Star Studios India Pvt. Ltd. v. M/S Vikas Productions & Ors.¹⁶. The lawsuit, which was filed as a writ petition, claimed that the movie disrespected and provoked the legal profession by portraying it as a joke. A committee consisting of three members was established by the Bombay High Court to view the film and provide commentary. This was seen to be unnecessary because the Board of Film Certification already existed and had the authority to censor.

The Court has overreached even in executive appointments like when it struck down the National Judicial Appointments Commission (NJAC) in 2015 although the commission was established by the 99th Constitutional Amendment Act 2014 to replace the Collegium System, the Supreme Court declared the NJAC unconstitutional, reinforcing judicial precedence in appointments.

The overreach and adventurism are also seen through its intervention in Bureaucratic Appointments like when the Supreme Court overturned the government's decision to remove Alok Verma as CBI Director in 2018¹⁷.

The Collegium Struggle: An Additional 142 Stretch

The Supreme Court reinstated the collegium system after overturning the National Judicial Appointments Commission in the 2015 NJAC ruling. The Court threatened to use Article 142 to enforce its judge selections when the Centre postponed appointments¹⁸.

¹⁵ INDIA CONST. art. 47

¹⁶ (2017) SCC OnLine Bom 891

¹⁷ **Alok Kumar Verma v. Union of India & Anr., (2019) 3 SCC 619**

¹⁸ **Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1**

The President's constitutional appointment of judges under Article 124¹⁹ is compromised by this. The result is a rubber-stamp president in which the court makes decisions and imposes them without consulting the administration.

THE TAMIL NADU CONTROVERSY AND THE COMPLETE JUSTICE

CLAUSE

The controversy has indicated a hidden conflict between the President and the Judiciary. The President was not named in the case, but the ramifications are obvious. Article 142 can now bypass the Governor's decision to withhold a measure and forward it to the President for review.

It raises a significant constitutional query that whether the Supreme Court can supersede the Union's decision-making power with its own interpretation of justice; the answers remain vague even although the consequences seem concerning.

In April 2024, the Tamil Nadu DMK Government accused Governor R.N. Ravi of holding up over a dozen bills ranging from university appointments to the controversial anti-NEET legislation. In April 2025, the Supreme Court dropped a massive 415-page ruling calling the Governor's actions 'illegal' and 'erroneous.' Apart from this, the Hon'ble Court went a step ahead and passed all the pending bills and set strict deadlines for the Governor and the President to adhere to. Not stopping here, the Hon'ble Court handed the state government a legal weapon: a mandamus writ to drag the non-compliant ones to court.

Article 200²⁰ was totally disregarded by the Court. It gives the governor the authority to approve, reject, or hold off on signing any legislation passed by the state legislature until the president has had a chance to review it. The SC intervened, stating that governors had to decide within a "reasonable timeframe" and could not just hold off on passing legislation indefinitely. The worst part is that the length of that "reasonable time" isn't specified in the Constitution. The Hon'ble Court seems to be creating the rules as it goes along thereby acting as the legislature conflicting the separation of powers.

¹⁹ INDIAN CONST, art 124

²⁰ INDIAN CONST, art 200

The Constitution doesn't give governors any deadlines for these measures, as even the Punchhi Commission (2010) had noted²¹. They proposed a six-month limit, but it was never put into effect. So, the Court has gone beyond its authority to interpret the rulebook and rewrite it by imposing an artificial schedule where none exists. In essence, it is carrying out the duties of legislators.

The main query thereby questions the separation of powers overridden by the judiciary. In fact, the Court itself explicitly rejected the idea of adding a time restriction to Article 200 in *Purushothaman Nambudiri v. State of Kerala*²² and has contradicted itself by giving this recent judgment.

The Constitution's Article 163(1)²³ permits governors to exercise their own judgment and does not always need the Council of Ministers' consent, but the court tries to convey otherwise. It has been made abundantly evident by cases such as *Madhya Pradesh Special Police v. State of Madhya Pradesh*²⁴ that the governor does not always need the state government's advice before acting if they feel that a bill violates the constitution.

The Governor must engage in this important consideration before deciding on a law, and the Court should not impose a time limit on it. It necessitates thoughtful consideration rather than artificial deadlines.

The Court's obvious omission in this case is completely perplexing. The governor still has the authority to send a law to the president for final approval even if there is an initial refusal to sign it. The governor's authority to involve the president is not taken away just because the state government adopts the same law again. The constitutional powers cannot be something that could vanish overnight. The SC requested that the Governors or the President defend their acts in court. They are expressly granted legal immunity under Article 361²⁵, thus that is a clear violation of that provision. The Court simply ignores its own precedent, which states unequivocally that the President's assent cannot be contested in court, from *Hoechst*

²¹ **Punchhi Commission Report on Centre-State Relations**, Vol. I–VII (Gov't of India, 2010)

²² **1962 AIR 694**

²³ INDIAN CONST, art 163(1)

²⁴ **AIR 2005 SC 325**

²⁵ INDIAN CONST, art 361

Pharmaceuticals Ltd. v. State of Bihar²⁶.

FINDINGS AND ANALYSIS

Although the Constitution's framers intended for the governor to be a "constitutional head, a sagacious counsellor and adviser to the Ministry" and someone who could "pour oil over troubled waters," the reality of the current case has been completely different, with this Court being asked to calm the troubled waters caused by the ensuing protracted battle of a high constitutional order between the petitioner and the respondent.

The Hon'ble SC has openly used the "complete justice"²⁷ phrase (Article 142) as a weapon to carry out the entire verdict. The Court further seems to be giving the President and the Governors fictitious deadlines and threatening to take legal action if they don't follow them. There seems to be a total breakdown of executive independence.

The entire ruling, then, is a prescription for constitutional chaos in which every presidential move is subject to court scrutiny. Although it wasn't often used before, the Supreme Court today views Article 142 as a broad authorization to change governance.

The Court is now prescribing how the head of state is to use his authority. This intrusion into the executive realm is unusual. The Court is now actively altering the Constitution rather than merely interpreting it.

The interpretation of Article 200²⁸ must be done in line with the intent of the framers of the Constitution which is evident from the Constituent Assembly Debates. The Governor while acting under Article 200 is not acting in exercise of ordinary discretion but is acting under a constitutional responsibility. Thus, even if it is assumed that the Governor has no individual discretion, he may still withhold assent to a bill as per his constitutional obligation.

The Court in *Purushothaman Nambudiri v. State of Kerala*²⁹ the respondent had submitted that the idea of reading in a time limit in Articles 200 and 201 respectively had been deliberated

²⁶ (1983) 4 SCC 45

²⁷ INDIAN CONST, art 142

²⁸ INDIAN CONST, art 200

²⁹ 1961 SCC OnLine SC 361

upon and expressly rejected by the Court in the said decision.

Ultimately, the Hon'ble Supreme Court has the right to interpret the Constitution under Article 145(3) which states that "The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five". At the time the Constitution was framed, the strength of the Supreme Court was eight judges, of which a Bench to interpret the Constitution had to have five judges. This was a clear majority of the Court. The apex court now has 30 judges; hence an amendment to deal with cases under Article 145(3) should be considered³⁰.

CONCLUSION AND RECOMMENDATIONS

Whatsoever be the need of the hour, if it can still be done by the different organs of the Government to their best, separation of powers must specifically be followed. Although it is a Directive Principle of State Policy and not enforceable, it is one of the aims of a welfare State through Article 50 which entails "Separation of judiciary from executive.: - The State shall take steps to separate the judiciary from the executive in the public services of the State." and must be followed in order to respect the intent of the Constitution makers.

The ruling on the Governor was the ignition of a huge questioning on the separation of powers in India. Some have celebrated it as a necessary check on obstructive Governors, while others have criticised it as a classic case of judicial overreach.

In only certain extreme cases, the President acts in legislative powers through Ordinances but the existence of Ordinance is still put through some Constitutional checks³¹ which helps in keeping the powers of the executive in check. The same should be followed for judiciary and their powers should also be kept in order to prevent the excessive use of their powers.

Article 361 provides immunity to Governors and President from legal proceedings. In *Ram Jawaya Kapoor v. State of Punjab*, the Supreme Court ruled that while the Indian Constitution does not explicitly recognize the doctrine of separation of powers in its strictest form, it does

³⁰ *Supra*, note 10

³¹ INDIAN CONST, art 123

recognize the functions of the various branches of government. As a result, it can be said that our Constitution does not allow for the assumption of functions that fundamentally belong to another by one organ or part of the state.

In the case of *P Kannadasan v. State of Tamil Nadu*, it was decided that the Constitution gave the Constitutional Courts the authority to declare laws passed by Parliament and state legislatures that violated its provisions unconstitutional. The legislature cannot pass a statute announcing that the court's ruling will not be implemented; it cannot override or cancel the court's decision in cases where a legislative act has been declared illegal by the courts due to parliamentary incompetence. However, this does not preclude the legislature, which has the authority to pass laws, from doing so again.

Additionally, the legislature has the authority to change the judgment's foundation. Although the new or amended statute may be contested on other grounds, it cannot be contested on the basis that it aims to evade or circumvent the court's ruling. This is what is meant by “checks and balances” inherent in a system of government incorporating separation of powers.

This is why it was necessary to analyse a directive is given to the President to decide matters in a time-bound manner. This has actually questioned the authority of the President itself as it went without hearing the President’s side and it therefore seemed to be an epitome of judicial entitlement. As our Vice President had quoted that “judges are deciding who will legislate, who will perform executive functions, who will act as super Parliament; with no accountability, as the law of the land does not seem to apply to them.” Even the current CJI B R Gavai has recently expanded on judicial terrorism.

“Judicial activism is bound to stay. At the same time, judicial activism should not be turned into judicial terrorism. So, at times, you try to exceed the limits and try to enter into an area where, normally, the judiciary should not enter,” He has further emphasised that, “that power has to be exercised in a very limited area in very exception cases, like, say, a statute, is violative of the basic structure of the Constitution, or it is in direct conflict with any of the fundamental rights of the Constitution, or if the statute is so patently arbitrary, discriminatory... the courts can exercise it, and the courts have done so,”

Still it sometimes seems to be losing its own rhythm. The judiciary of India is in constant state of improvement and the need of the hour is to see the development of the nation with the

continuity of monitoring of the Constitution of India and following it; but these decisions seem to be challenging the very fundamentals of separation of powers here and there.

Although we are grateful to our judiciary for being transparent and strong in certain matters, the Constitution is the one Supreme, as it is also the one which gives power to the judiciary to function as independently as it does now. Just by syncing with its powers guaranteed and not overstepping it is clearly going to be the win for the entire public and the legal system itself.

