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With this thought, we hereby present to you

BALANCING POWER AND DISCRETION: THE ROLE OF SEPARATION OF POWERS IN SHAPING GOVERNMENTAL AUTHORITY

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Abstract

This paper delves into the intricate relationship between governmental discretion and the doctrine of separation of powers within constitutional democracies, with a particular focus on the Indian framework. While the separation of powers is designed to prevent the consolidation and misuse of authority by distributing legislative, executive, and judicial responsibilities across distinct branches, the demands of contemporary governance necessitate a certain level of discretion—especially within the executive. Though such discretion is crucial for effective and adaptive administration, it carries the potential for arbitrariness and abuse if left unchecked. The paper examines how legislative and judicial bodies in India work to regulate this discretion, emphasizing the need for a balanced system that upholds accountability, safeguards institutional independence, and ensures adherence to the rule of law.

Introduction

Separation of powers is a fundamental principle in governance where the functions of government are divided among distinct branches, ensuring that no single entity or individual holds excessive power.¹ This division typically includes the legislative (law-making), executive (law-enforcing), and judicial (law-interpreting) branches.

The origin of this principle goes back to the period of Plato and Aristotle. It was Aristotle who for the first time classified the functions of the Government into three categories viz., deliberative, magisterial and judicial.² Locke categorized the powers of the Government into

¹ Syed Umam Fatima Hasan & Mohd Faiz Khan, Separation of Powers, 4 INT'L J.L. MGMT. & HUMAN. 2016 (2021).

² Devanshi Sharma, *Separation of Powers in India*, O.P. Jindal Glob. U., <https://pure.jgu.edu.in> (last visited Apr. 17, 2025).

three parts namely: continuous executive power, discontinuous legislative power and federative power. “Continuous executive power” implies the executive and the judicial power, discontinuous legislative power “ implies the rule making power, federative power” signifies the power regulating the foreign affairs.³

The French Jurist Montesquieu in his book *L. Esprit Des Lois* (Spirit of Laws) published in 1748, for the first time enunciated the principle of separation of powers. That’s why he is known as modern exponent of this theory.⁴ Montesquieu’s doctrine, in essence, signifies the fact that one person or body of persons should not exercise all the three powers of the Government viz. legislative, executive and judiciary. In other words, each organ should restrict itself to its own sphere and restrain from transgressing the province of the other.⁵

Separation of powers is the division of the legislative, executive, and judicial functions of government among separate and independent bodies. The legislature makes laws, the executive puts those laws into effect, and the judiciary administers justice by interpreting the law and ensuring that the law is upheld.⁶ The purpose of separation is to limit the possibility of arbitrary excesses by the government. Separation of powers also prevents misuse of power or accumulation of power in a few hands, which thereby safeguards the society from arbitrary and irrational power of the state.

At its core, the concept of governmental discretion recognizes that not all actions of the state can be exhaustively detailed through legislation. Legislators often frame laws in broad, general terms, which must be interpreted and applied by administrators and judges in real-world situations. This inherent vagueness in legislation necessitates the exercise of judgment by public officials, particularly those in the executive branch, to decide how laws should be enforced and policies implemented.⁷ While discretion enables the government to be responsive and adaptable, it also creates room for subjectivity, inconsistency, and potential misuse. Hence, the extent and manner of exercising discretion must be bounded by legal norms

³ Sam J. Ervin, Jr., *Separation of Powers: Judicial Independence*, Duke L.J., <https://scholarship.law.duke.edu> (last visited Apr. 17, 2025).

⁴ Id

⁵ Id

⁶ Khushi Pandya, *Separation of Powers – An Indian Perspective* (Apr. 22, 2013), <https://doi.org/10.2139/ssrn.2254941>

⁷ G. E. Treves, *Administrative Discretion and Judicial Control*, 10 MOD. L. REV. 276 (July 1947).

and institutional oversight. This oversight is most effectively achieved through the separation of powers, which establishes institutional mechanisms to review, challenge, or constrain discretionary decisions when necessary.⁸

Moreover, the separation of powers enhances the legitimacy and credibility of governmental discretion by subjecting it to procedural safeguards and institutional review. When discretionary decisions are made within a framework of transparent legal norms, subject to challenge and debate, they are more likely to be accepted by the public and less prone to arbitrariness. Courts, in particular, have played a pivotal role in establishing the legal principles that guide the use of discretion. Through doctrines such as proportionality, reasonableness, and legitimate expectation, judges assess whether discretionary actions align with constitutional values and statutory objectives. These judicial standards not only constrain administrative excesses but also guide public officials in exercising their powers in a fair, consistent, and rational manner.⁹ The judiciary thus serves as both a guardian of the constitution and a moderator of discretionary authority, reinforcing the structural integrity of the separation of powers.

Separation Of Powers in India

India has embraced the parliamentary system of government from the British Constitution and has also incorporated the concept of federalism inspired by the Canadian Constitution. The doctrine of separation of powers serves as a foundational principle supporting both the federal and parliamentary frameworks within the Indian governance model.¹⁰ The Indian Constitution assigns distinct powers and responsibilities to each branch of the central government. However, unlike the United States—which follows a strict application of the separation of powers due to its comprehensive written Constitution and Presidential form of government—India does not implement this doctrine in an absolute or rigid sense.¹¹

India does not follow a strict separation of powers like the United States; instead, it adopts a system of separation of functions, where the Legislature, Executive, and Judiciary have distinct

⁸ Id

⁹Pallavi Bajpai & Mohit Vats, *Separation of Power & Delegated Legislation: An Implicit Poise Created by Judicial Detour*, 6 **Int'l J. Creative Res. Thoughts** (IJCRT) (Apr. 2018)

¹⁰ Vinita Choudhury, *Separation of Powers: A Comparative Study of India, USA, UK and France*, 1 **NLIU L. Rev.** 99 (Apr. 2010).

¹¹ Id

roles but also interact and overlap in certain areas. This framework is guided by a system of checks and balances, ensuring that no single branch becomes too powerful while still allowing for necessary cooperation.¹²

The Indian Parliament, comprising the Lok Sabha and Rajya Sabha, is primarily responsible for making laws, but it also oversees the executive's actions, amends legislation, and can initiate the impeachment of judges. The executive, headed by the President and run by the Prime Minister and Council of Ministers at the national level and the Governor and Chief Minister at the state level, is tasked with implementing laws and managing daily administration. The judiciary, including the Supreme Court, High Courts, and subordinate courts, interprets laws, resolves disputes, and ensures that actions taken by the government align with the Constitution.¹³

Although the Constitution does not explicitly demand a rigid division of powers, it implies such a structure through various provisions. For example, Article 50 recommends separating the judiciary from the executive, and Articles 53 and 154 grant executive powers to the President and Governors. Articles 121 and 211 prevent legislatures from discussing judicial conduct except in impeachment cases, while Article 123 gives the President temporary law-making powers through ordinances.

The Constitution also ensures mutual checks: the judiciary can invalidate unconstitutional laws or executive decisions, and the legislature can monitor the executive and even remove judges under certain conditions.¹⁴ Functional overlap is evident—for instance, the legislature can perform judicial tasks like impeachment, the executive can issue ordinances, and judicial appointments involve both the judiciary and the executive. Thus, while India does not enforce a rigid separation of powers, it effectively maintains a balanced system that upholds constitutional values and democratic governance.¹⁵

¹² Id

¹³ Id

¹⁴ P. Parameshwar Rao, *Separation of Powers in a Democracy: The Indian Experience*, 37 **Peace Rsch.** 113 (May 2005).

¹⁵ Id

Governmental Discretion

Governmental discretion refers to the authority vested in government officials to make decisions based on their judgment and reasoning, rather than being strictly bound by predetermined rules or guidelines.¹⁶ This power allows for flexibility in addressing complex situations and balancing public and private interests, but it also requires careful consideration to prevent abuse and ensure fairness. Discretion implies the power to make a choice between an alternative course of action and inaction.¹⁷ A public officer has discretion whenever the effective limits of his powers leave him free to make a choice among possible courses of action or inaction.

Discretionary power is vested in an authority through various means, primarily by statute or through the establishment of a constitutional framework. This power allows the authority to make decisions, exercise judgment, and act within the bounds of the law, but without strict pre-defined rules or detailed instructions.¹⁸

The Constitution of India also vests certain discretionary powers on the executive to decide on certain matters. The President of India exercises discretionary powers. The discretionary powers of the Indian president are not explicitly mentioned in the Indian constitution. But cases, where the Indian President do not act on the advice of ministers, can be understood as the use of discretionary power, if one carefully read the provisions related to the Indian President.¹⁹

The President has discretion in inviting the leader or coalition of leaders to form a government when no party or coalition holds a majority in the Lok Sabha. The decision to dissolve the Lok Sabha when the union ministry loses its majority in the Lok Sabha is left to the discretion of the President. The Indian President has discretionary powers to return the advice provided by the council of ministers and ask for a reconsideration of a decision.²⁰

¹⁶ Barkha Tandon, *Abuse of Administrative Discretion—A Detailed Study*, SCC Online Blog (June 24, 2022)

¹⁷ Id

¹⁸ *Welfare State, Wide Discretionary Powers and the Era of Administrators*, Report No. 126, AdvocateKhoj, <https://www.advocatekhoj.com>

¹⁹ Satish, Mrinal (2000) "Discretionary Powers of the President under the Indian Constitution," *National Law School of India Review*: Vol. 12: Iss. 1, Article 2.

²⁰ Id

Similarly, the Governors of the States also exercises discretionary powers.²¹ The Governors of states can act at their constitutional discretion in the following instances:

- When they have to reserve the bill for the consideration of the President of India, Governors can decide on their own without the advice of the Council of Ministers
- When he has to recommend for the President's in the state, he can act at his own discretion
- When he is given an additional charge as the administrator of the Union Territory, he can take actions at his own discretion
- When he has to determine the amount payable by the Government of Assam, Meghalaya, Tripura, and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration
- When he calls upon the Chief Minister to seek information regarding administrative and legislative affairs

The Governor's exercise situational discretion in cases like:

- When he has to appoint a Chief Minister after no party has a clear majority in the election or when the incumbent dies in the office
- When he dismisses the council of ministers on an inability to prove confidence in the state legislative assembly
- When he dissolves the state legislative assembly on time when it loses its majority.

In modern governance, legislatures often delegate discretionary powers to public administrators because it is impractical to anticipate and legislate for every possible scenario. Discretion allows officials to make decisions based on specific circumstances. For instance, in *Baker v. Canada*²², the immigration minister had lawful discretion to grant exemptions on humanitarian grounds, guided by policy considerations. Similarly, in *N. Nagendra Rao & Co v. State of Andhra Pradesh*²³, Section 6-A of the Essential Commodities Act empowered the Collector to confiscate goods if there was sufficient satisfaction that a dealer violated the control order. Moreover, executive bodies and administrative agencies are often authorized to create general rules, such as regulations and bylaws, due to their subject-matter expertise and

²¹ Vincent Joy, *The Use and Abuse of Discretionary Powers of Governor in Formation of Ministry in a State in India*, 64 **Indian J. Pub. Admin.** 228 (2018)

²² [1999] 2 S.C.R. 817

²³ AIR 1994 SC 2663

the practical need to respond quickly to evolving situations. These delegated rule-making powers complement primary legislation and are essential for managing the complexities of a modern administrative state.

Administrative Discretion: Classical And Evolving Perspectives

Traditionally, constitutional scholars such as A.V. Dicey viewed administrative discretion with suspicion. Dicey believed that the rule of law required all decisions to be grounded in consistent, predictable legal norms, rather than the open-ended judgment of administrative officials. He warned that broad discretionary powers could weaken judicial oversight and threaten civil liberties, making such powers closely resemble arbitrary rule.²⁴

However, the evolving view emerged with the rise of the welfare state, where legal scholars like Robson and Jennings recognized that discretion is often necessary for effective governance. These later thinkers accepted that in complex societies, rigid laws alone are insufficient and some degree of flexibility is vital. Importantly, they emphasized that discretion must be exercised within legal limits. Rather than eliminating discretion, courts began crafting standards to regulate and assess how it is used, thereby aligning discretion with the principles of the rule of law.²⁵

The need for control of administrative or governmental discretion stems from the potential for abuse of power and the importance of upholding fundamental rights and the rule of law. Discretionary power, while necessary for efficient governance, can be misused if not subject to oversight and accountability. Therefore, various mechanisms are in place to ensure that administrative actions are lawful, fair, and do not infringe upon individual liberties.

Legislative Control of Discretion

The executive remains accountable to the Parliament in India's democratic structure. The Parliament can frame policies, rules and guidelines restricting discretion available to administrators. MPs can also raise grievances regarding administrative high-handedness through questions, debates etc. forcing the executive to respond.²⁶

²⁴ G.E. Treves, *Administrative Discretion and Judicial Control*, 10 *Mod. L. Rev.* 276 (July 1947).

²⁵ *Supra* @ 24

²⁶ *Administrative Discretion under Administrative Law*, LawFoyer, <https://lawfoyer.in/administrative-discretion-under-administrative-law>

However, parliamentary control has limitations as the legislature lacks the time for examining individual instances of misuse of discretion. Complete policy straitjacketing through parliamentary legislation is also not feasible. The intricacies of implementation ultimately need to be left to the administrators' judgment.

In India's parliamentary democracy, the executive is held accountable to the legislature, which plays a crucial role in scrutinizing administrative decisions and the use of discretionary power. While Parliament has the authority to frame policies, rules, and guidelines to limit administrative discretion, it also provides platforms for addressing concerns of misuse or inefficiency.²⁷

- Legislative Oversight through Lawmaking - One of the primary ways in which the legislature exercises oversight over the executive is through the process of lawmaking. Acts of Parliament are not just instruments for policy creation—they are foundational tools for defining and regulating the powers, responsibilities, and limitations of various administrative bodies. By enacting comprehensive statutes, Parliament ensures that the actions of the executive remain within a defined legal framework, thus preventing misuse or overreach of power.

Parliament provides detailed rules, policy guidelines, and procedural norms to guide the actions of administrative authorities. This legal scaffolding helps limit the scope for arbitrary decision-making and ensures that administrative discretion is exercised in accordance with democratic values and constitutional principles. The specificity in legislative design plays a crucial role in maintaining transparency, consistency, and predictability in governance.²⁸

Examples such as environmental regulation, consumer protection laws, and public health legislation highlight how Parliament not only articulates broad national policy goals but also lays down concrete procedures and mechanisms for implementation. For instance, a law on environmental protection may include general principles for sustainability, while also specifying the standards for emissions, the process for granting environmental clearances, and the penalties for violations. This detailed legislative structuring acts as a check on executive actions, ensuring that bureaucratic discretion aligns with the legislative intent.

²⁷ N.C. Chatterjee, *Control of the Legislative Powers of Administration*, 1 **J. Indian L. Inst.** 123 (Oct. 1958).

²⁸ M.P. Jain, *Administrative Discretion and Fundamental Rights in India*, 1 **J. Indian L. Inst.** 223 (Jan. 1959).

- **Budget and Appropriation Process**- Another crucial mechanism of legislative oversight is the budget and appropriation process, which is central to the functioning of a parliamentary democracy. The executive cannot spend public funds without obtaining prior approval from Parliament, which holds the "power of the purse." This requirement forms the bedrock of financial accountability in a democratic system.²⁹

Each year, the government is required to present a budget to Parliament, detailing proposed expenditures and anticipated revenues. During these budget sessions, Members of Parliament (MPs) engage in thorough discussions, debates, and scrutiny of the executive's financial proposals. They can question the rationale, examine the efficiency, and assess the fairness of various government programs, allocations, and fiscal priorities. This interactive process not only promotes transparency but also compels the government to justify and defend its economic policies and spending choices in the public domain.³⁰

Through this process, Parliament plays a pivotal role in aligning government spending with national priorities, public welfare, and legal obligations. It also allows MPs to bring attention to underfunded sectors, highlight policy inconsistencies, and ensure that funds are being used effectively and ethically. As a result, the budget process becomes a powerful tool for fiscal oversight, policy evaluation, and democratic accountability.³¹

- **Question Hour and Zero Hour** are essential mechanisms that allow Members of Parliament (MPs) to directly question ministers regarding governance and policy matters. These sessions are especially effective in probing discretionary misuse, with supplementary questions enabling further examination. Zero Hour, in particular, provides flexibility by allowing MPs to raise urgent issues without prior notice.³²
- **Parliamentary Committees** such as the Standing Committees, the Public Accounts Committee (PAC), the Estimates Committee, and the Committee on Public Undertakings (COPU) function beyond the glare of public debate, conducting in-depth reviews of government policies, the application of discretionary powers, and ministry performances. These committees are crucial for expert and unbiased evaluation of executive functioning.³³

²⁹ *Administrative Discretion: Meaning and Control of Discretion*, LawBhoomi, <https://lawbhoomi.com/administrative-discretion-meaning-and-control-of-discretion>

³⁰ Id.

³¹ Supra@30

³² Supra@30

³³ Supra@26

- **Parliamentary Debates and Motions** are tools through which MPs bring public attention to executive overreach or failures. Instruments like Calling Attention Motions, Adjournment Motions, and No-Confidence Motions compel the executive to explain its actions and decisions.³⁴

Despite these mechanisms, parliamentary oversight has limitations. Time constraints and the complexity of governance make it difficult for legislators to examine every instance of discretionary misuse. Therefore, while Parliament can set general limits and demand accountability, the nuanced decisions involved in policy implementation often require reliance on the judgment of public administrators.³⁵

Judicial Control of Discretion

Judicial control of administrative discretion is essential to uphold the principles of the rule of law, fairness, and accountability in governance.³⁶ As administrative authorities are often granted wide-ranging discretionary powers to implement policies and make decisions, there is a risk of misuse, arbitrariness, or actions that may infringe upon individual rights. Judicial oversight acts as a safeguard against such excesses by ensuring that discretion is exercised within the limits of law, guided by reason, and not influenced by bias or personal judgment. Courts play a crucial role in reviewing administrative actions to determine whether they are legal, reasonable, and in alignment with constitutional and statutory provisions. This control not only protects citizens from unjust decisions but also reinforces public confidence in the fairness and integrity of administrative processes.³⁷

Judicial review has emerged as a cornerstone of public law in the latter half of the 20th century. It empowers the judiciary to examine the legality and constitutionality of administrative and legislative actions.³⁸ This is particularly crucial in a democracy where checks and balances are essential. Judicial review serves as a mechanism to enforce the rule of law, ensuring that all actions by public authorities are legal, fair, and just. It reinforces the idea that no one is above the law, including the executive and legislature.

³⁴ Supra@26

³⁵ Supra@26

³⁶ *Judicial Control of Administrative Discretion – Control at the Stage of Delegation of Discretion*, LawBhoomi, <https://lawbhoomi.com/judicial-control-of-administrative-discretion-control-at-the-stage-of-delegation-of-discretion>

³⁷ Id.

³⁸ A. Subasri M.L., *Judicial Review of Administrative Discretion – An Analysis*, 8 *Int'l J. Res. Trends & Innovation (IJRTI)* (2023).

The doctrine of judicial review is considered the essence of the Constitution and the touchstone of the rule of law. It upholds fundamental constitutional values by providing remedies against arbitrary or unlawful use of power. No authority, regardless of its stature, can act beyond its legal powers. Judicial review prevents the concentration of unchecked power in any one branch of government. It reflects the principle of limited government—that power must be controlled and answerable. The judiciary, through judicial review, ensures that the actions of public authorities are within the bounds of legality. This review is not about correcting every mistake, but about ensuring fairness and absence of abuse of power.

In the case of *Mahesh Chandra v. U.P. Financial Corporation*³⁹, the Court held that the objective of judicial review is not to determine whether the decision was legally 'correct', but to ensure no abuse of power, fair and just treatment to individuals and adherence to procedural fairness.

In the *Minerva Mills v. UOI*⁴⁰ the SC adjudged that the purpose of creating an independent judiciary by the constitution is to determine the legality of the administration and validity of the constitution. It is the duty of the Judiciary to keep the different authorities of the state within the limits of the powers conferred to them by the constitution by exercising the power of judicial review as sentinel on the qui vive.

Krishna Iyer J. in *Baldev Raj v. Union of India*⁴¹ has also highlighted that, “absolute, power is anathema under our constitutional order” and that “naked and arbitrary exercise of power is bad in law”.

It is currently very much acknowledged that in any event, when a discretionary power apparently has all the earmarks of being uncontrolled, really it isn't so and it will be dependent upon the foundations which courts will suggest therein.

Judicial control over administrative discretion in India operates at two distinct stages:

- (i) during the delegation of discretion, and
- (ii) during the actual exercise of that discretion.**

³⁹ 1993 AIR 935

⁴⁰ AIR 1980 SC 1789

⁴¹ AIR 1981 SCR (1) 430

1) **Control at the Stage of Delegation of Discretion:**

At this stage, the judiciary ensures that the delegation of discretionary powers to administrative bodies is constitutionally valid. The courts examine whether the law granting such powers aligns with the fundamental rights enshrined in Part III of the Indian Constitution.⁴² If a statute is found to confer excessively broad or vaguely defined discretionary powers, it may be struck down as unconstitutional—particularly under Articles 14 and 19, among others. Furthermore, even if a law does not directly authorize administrative action, it might delegate the power to formulate rules and regulations that affect citizens' rights. In such cases, the judiciary can intervene to prevent what it considers an excessive delegation of authority.

2) **Control at the Stage of Exercise of Discretion**

Unlike the United States, India does not have a codified Administrative Procedure Act to govern judicial review of administrative discretion.⁴³ Instead, judicial review stems from the constitutional role assigned to the courts. Indian courts have consistently emphasized that allowing administrative authorities to exercise unchecked or "judge-proof" discretion undermines the rule of law. To prevent such situations, the judiciary has developed certain legal principles to regulate how discretion is exercised. These can be broadly categorized into two areas:

- **First**, situations where the authority is considered not to have exercised its discretion at all—such as acting under dictation or failing to apply its mind.
- **Second**, instances where the discretion has been exercised improperly—such as based on irrelevant considerations, mala fide intentions, or in violation of natural justice.

Through these means, the courts ensure that administrative discretion is used lawfully, reasonably, and in a manner that respects constitutional principles.

Judiciary And Policy Decisions

With the ongoing socio-economic and political developments in society, the responsibilities of the Legislature have significantly increased, which in turn has led to a considerable expansion in the delegated powers of the Executive. Among these powers, policymaking holds a crucial

⁴² *Administrative Discretion and Its Judicial Control*, Law Univ. of Kashmir, <https://law.uok.edu.in>.

⁴³ *Supra*@42

position as it enables the government to proactively address future challenges and manage day-to-day governance in response to the evolving needs of the people.⁴⁴

The Executive is primarily responsible for formulating policies, and it enjoys a certain degree of discretion in this domain due to the technical nature and urgency that often accompanies policy decisions.

In general, courts refrain from interfering in policy matters, recognizing that policymaking falls within the purview of the Executive. This is rooted in the principle of separation of powers, where each branch of government operates within its own sphere. Moreover, the judiciary acknowledges that it may lack the technical expertise and democratic legitimacy to second-guess policy choices made by elected representatives.⁴⁵

However, this discretion is not absolute. Courts may intervene if a policy decision violates the fundamental rights guaranteed by the Constitution or contravenes statutory provisions. For instance, if a policy is arbitrary, discriminatory, or infringes upon the right to equality or life, the judiciary has the authority to strike it down or demand modifications.⁴⁶ Similarly, if a policy goes beyond the limits set by an Act of Parliament or the rules framed under it, judicial intervention becomes necessary. In such cases, the judiciary acts as a guardian of the Constitution to ensure that administrative discretion is exercised legally, fairly, and in accordance with the principles of justice.⁴⁷

A policy decision is subject to judicial review on the following grounds:

- if unconstitutional
- if it deforms the provisions of the Act and the regulations
- if the delegate has acted beyond its power of delegation
- if executive policy is contrary to the statutory or a larger policy.

⁴⁴ Dr. Uday Shankar & Saurabh Bindal, *Policy Initiatives and the Role of Indian Judiciary*, SCC Online Blog (May 19, 2016), <https://www.sconline.com/blog/post/2016/05/19/policy-initiatives-and-the-role-of-indian-judiciary-initiatives-and-the-role-of-indian-judiciary>

⁴⁵ Dr. Shripad Kulkarni, *Constructive Role of Judiciary in Shaping Public Policy in India*, *Int'l J. for Multidisciplinary Res.*, <https://www.ijfmr.com>.

⁴⁶ Id.

⁴⁷ Id.

In the case of *State of Rajasthan v. Union of India*⁴⁸, the Court held that the Supreme Court is the final interpreter of the Constitution, is responsible for determining the limits of powers possessed by each branch of the government has, whether they are limited, and if so, what those restrictions are, and if any action taken by that branch violates those constraints. As a result, it is the court's job to protect constitutional ideals and enforce constitutional constraints. This is what the rule of law is all about.

Similarly in the case of *A.K. Kaul v. Union of India*⁴⁹, the Supreme Court held as that the task of interpreting the constitution was entrusted to the judiciary and it can review the validity of any action of any authority functioning under the Constitution on the parameters laid down in the Constitution so as to ensure that the exercise of power by the authority is not ultra vires of the limitations placed by the Constitution on exercise of such power.

Limitations Of Judicial Intervention in Policy Decisions

Courts cannot intervene in policy on the grounds that it is incorrect or that a better, fairer, or wiser option is available.⁵⁰ Judicial review of any policy must be based on the legality of the policy instead of its wisdom or soundness. Alternatively, it can be said that the court's role is to ensure that legitimate authority is not abused via unfair treatment, and not to take on the work that the law has given to that authority.⁵¹

The goal of judicial review is to ensure that the individual is treated fairly, not to assure that the authority, after providing fair treatment, comes to a valid conclusion in the eyes of the court on an issue that it is authorized by law to resolve for itself.⁵²

The courts should avoid the urge to undermine the executive's power by interfering in areas that are solely the executive's domain. The court would be guilty of usurping its power if it did not refrain from participating in such issues. The court must keep in mind that the decision was reached by the administrative authority after adhering to the principles established by law and the rules of natural justice, and the individual was treated fairly to meet the case against him.

⁴⁸ AIR 1977 SC 1361

⁴⁹ 1995 INSC 278

⁵⁰ Eshita Pallavi, *Judicial Review of Policy Decisions in India*, **International Journal for Advanced Legal Research**, ISSN (O) 2582-7340.

⁵¹ Id.

⁵² Id.

For any matter that falls within the domain of the executive, the court must not substitute its own views for that of the administrative authority who decided in the given matter.⁵³

The case of *State of Kerala v. Gwalior Rayon Silk Mfg. (Weaving.) Co. Ltd.*⁵⁴ reflects the attitude of the Supreme Court towards the administrative policy decisions-

“What programme of agrarian reform should be initiated to satisfy the requirement of rural uplift in a particular community under the prevailing circumstances is a matter for legislative judgment. Here, in this field the legislature is the policy maker and the court cannot assume the role of an economic advisor or censor competent to pronounce whether a particular programme of agrarian reform is good or bad from the point of view of the needs of the community. The sole issue for the Court is whether it is in fact a scheme of agrarian reform, and if it is, the prudence or folly thereof falls, outside the orbit of judicial review being a blend of policy, politics and economics ordinarily beyond the expertise and proper function of the court.”

The Supreme Court has asserted that any action of the executive, whether it is in the realm of administrative action, administrative discretion, administrative policy making or administrative adjudication, is within the purview of judicial review of the Supreme Court and the High Courts.

In the case of *State Of U.P And Others v. Gobardhan Lal 2004*⁵⁵, the Supreme Court of India on 2004, addresses the contentious issue of administrative discretion in the transfer and posting of government officers. The appellants, representing the State of Uttar Pradesh and other governmental bodies, challenged a Division Bench order from the Allahabad High Court that imposed broad directives on the transfer mechanisms of government servants. The central dispute revolved around the alleged political interference in the transfer of Gobardhan Lal, a District Supply Officer, and the High Court's subsequent attempt to establish generalized rules governing such transfers.

The primary contention was that the High Court overstepped its jurisdiction by issuing sweeping guidelines that limited the executive's discretion in administrative matters. The Supreme Court emphasized the principle that transfers are inherent conditions of service and

⁵³ Id.

⁵⁴ 1973 AIR 2734

⁵⁵ (11) SCC 402

should remain under the purview of the executive unless there is clear evidence of malafide intent or statutory violations.

In *Afcons Infrastructure Ltd v. Nagpur Metro Rail Corporation Ltd*⁵⁶, the Supreme Court firmly upheld the discretion of administrative authorities—like NMRCL—in formulating, interpreting, and enforcing the terms of a tender. The Court emphasized that as long as the decision-making process is not arbitrary, perverse, or mala fide, the courts should not interfere. The Court reiterated that judicial review of administrative discretion in tender matters is extremely limited and should only be invoked in cases involving: mala fides, arbitrariness, perversity in decision-making and favouritism.

Similarly, in *Roger Mathew v. South Indian Bank Ltd & Others*⁵⁷, the constitutional validity of Part XIV of the Finance Act, 2017 was challenged—which amended provisions of various enactments to empower the Union Government to set uniform conditions for the administration of Tribunals—through the twin lenses of separation of powers and governmental discretion. The amendments granted the Central Government vast discretionary power over essential judicial functions. By providing it with the authority to prescribe the qualifications, mode of appointment, tenure, salaries, and conditions of service for Tribunal members, the Finance Act, 2017, seeks to streamline and homogenize the fragmented regime governing these bodies. However, such an expansive delegation of power raises grave concerns regarding the infringement of the judicial domain and the overall separation of powers.

The Apex Court held that while governmental discretion is indispensable for addressing the diverse and unforeseen circumstances that arise in the administration of justice, it must be exercised within the boundaries set by the Constitution.

Judicial Over Reach

Judicial overreach refers to situations where the judiciary exceeds its constitutionally assigned boundaries and interferes with the functions of the legislative or executive branches, thereby potentially disrupting the balance of power and democratic framework.⁵⁸ While the Indian

⁵⁶ (2016) SCC OnLine SC 940

⁵⁷ 2019 INSC 1236

⁵⁸ Lakshmi Muralidhar, *The Judiciary on its Over-Reach*, 1 INT'L J.L. MGMT. & HUMAN. 61 (August-September 2018).

Constitution upholds the principle of separation of powers, it also empowers the judiciary with judicial review to ensure that the actions of the legislature and executive are in accordance with the Constitution. However, there have been instances where the judiciary has moved beyond its interpretative role and ventured into policy-making or administrative decisions. These actions, though often driven by executive failure or inaction, have been criticized for expanding judicial discretion and infringing upon the roles of other branches of government. Such overstepping can blur the distinct roles assigned to each branch and may cause institutional friction.⁵⁹ Although the judiciary has a critical responsibility in safeguarding fundamental rights and checking arbitrary governance, it must also exercise caution and self-restraint to preserve constitutional equilibrium and uphold the democratic structure.

For instance, in the case of *M.L. Sharma v. Principal Secretary, Union of India*⁶⁰, commonly associated with the "Coalgate" scandal, stands out as a significant instance where the judiciary exercised scrutiny over executive actions. The controversy centered around the allocation of coal blocks by the Ministry of Coal, which was conducted through a non-transparent and arbitrary process involving a Screening Committee. This mechanism lacked established guidelines or objective parameters, resulting in coal block allocations that appeared to favor certain entities without fair competition. Upon examining the process, the Supreme Court found the entire scheme to be unconstitutional, citing violations of Article 14, which guarantees equality before the law. As a consequence, the Court annulled 214 out of 218 coal block allocations, declaring them illegal due to the absence of transparency, fairness, and accountability.

While the judgment was hailed for upholding constitutional values and reinforcing the necessity of just and equitable governance, it also triggered a broader debate about judicial reach. Critics argued that the judiciary's intervention bordered on encroaching into the executive's domain, particularly in areas of economic and policy decision-making. Nonetheless, the ruling underscored that executive discretion must not be unfettered and should always align with constitutional principles such as fairness, equality, and non-arbitrariness.⁶¹

⁵⁹ Devarshi Mukhopadhyay, *Scrutinizing Judicial Over-Reach Within the Domain of the "New Wealth": Public Policy Post the Coalgate Era* Manupatra, <https://docs.manupatra.in> .

⁶⁰ [2013] 17 S.C.R. 1099

⁶¹ *Supra*@59

The Supreme Court's judgment in *State of Tamil Nadu v. Governor of Tamil Nadu*⁶² attracted both praise and criticism, particularly for its stance on the limits of gubernatorial discretion. Critics argue that while the decision provides much-needed clarity on the time limits within which a Governor must act on bills passed by the State Legislature, it simultaneously raises concerns about the delicate balance of power between the executive and the constitutional office of the Governor.

One major point of criticism stems from the Court's strict interpretation of Article 200 of the Constitution. The Court held that the omission of the phrase "in his discretion"—originally present in Section 75 of the Government of India Act, 1935—was a deliberate act by the framers of the Constitution to curtail any independent discretion of the Governor in legislative matters. Critics argue that this approach effectively reduces the Governor to a ceremonial figurehead in the legislative process, bound entirely by the advice of the Council of Ministers.⁶³ Furthermore, some constitutional scholars express concern that the ruling may erode the intended function of the Governor as a constitutional check, particularly in situations of political instability, legislative impropriety, or potential constitutional violations. They argue that while misuse of gubernatorial discretion must be addressed, completely stripping the office of interpretative authority could lead to a mechanical and inflexible role, diminishing the Governor's relevance in India's federal structure.⁶⁴

In essence, while the Court's ruling strengthens democratic accountability and curbs executive delays under the guise of discretion, critics believe it might have gone too far by practically eliminating the Governor's autonomy—thereby risking an imbalance in the federal architecture envisioned by the Constitution.

Judicial Restraint

The concept of **judicial restraint** is rooted in the idea that judges should exercise caution and humility in their role, especially when dealing with matters that fall under the jurisdiction of the legislative or executive branches. Rather than actively shaping policy or overriding

⁶² 2025 INSC 481

⁶³ Hitesh Jain, *Tamil Nadu Governor Case: Judicial Overreach, Not Constitutional Interpretation*, **Indian Express** (Apr. 14, 2025), <https://indianexpress.com>

⁶⁴ *Id.*

administrative decisions, judges following this philosophy focus on interpreting the law as it stands, showing deference to democratic processes and institutional boundaries.⁶⁵

Judicial restraint urges the judiciary to respect **precedent (stare decisis)** and the **original intent of the Constitution's framers**. It cautions against judicial activism, where courts may overstep by making rulings that essentially create new policy or reinterpret legislative intent in expansive ways. This principle ensures that the judiciary does not become a super-legislature, undermining the separation of powers.⁶⁶

In *Chitta Ranjan Mishra v. Utkal University*⁶⁷, the Court underscored this philosophy by stating that the judiciary should not replace its own judgment for that of an administrative authority, especially in areas where the law has specifically delegated such authority. The judiciary's role is not to assess whether the decision made was "correct" in substance, but to ensure it was arrived at through a fair and legal process. This illustrates the core idea of restraint—respecting the domain and expertise of other branches of government unless a clear violation of law or procedure is evident.

Similarly, in *Common Cause v. Union of India*⁶⁸, the Supreme Court dealt with the **limits of judicial oversight in legislative implementation**. The case centered around the **Delhi Rent Act, 1995**, which, though passed by Parliament, remained unenforced due to political pressure and proposed amendments responding to widespread tenant protests. The petitioners sought the Court's intervention to compel enforcement. However, the Court declined, highlighting that decisions about when or whether to bring a law into force fall under the executive's prerogative. Judicial intervention in such policy-driven matters would violate the principle of separation of powers.

This case emphasizes that courts must tread carefully and **avoid compelling the executive to act in ways that interfere with policy decisions**, even when the law has been legislatively enacted but not operationalized. The judiciary, in this view, plays a supervisory—not directive—role, intervening only when there is a clear breach of constitutional or statutory

⁶⁵ S. Tharani, A Critical Analysis on Judicial Review, Judicial Activism and Judicial Restraint in India, 4 INT'L J.L. MGMT. & HUMAN. 4361 (2021).

⁶⁶ Id.

⁶⁷ AIR 2001 Ori 17

⁶⁸ 2003 INSC 533

mandates. In essence, these cases reinforce the **importance of judicial self-restraint** to maintain a healthy equilibrium between the branches of government, upholding constitutional democracy by ensuring that each branch remains within its prescribed bounds.

The judiciary has consistently underscored the importance of maintaining the **distinct constitutional roles** of the legislature, executive, and judiciary. In this regard, courts have asserted that they should **avoid intruding into domains explicitly reserved for the executive**, particularly when matters of legislative discretion are involved.

In *A.K. Roy v. Union of India*⁶⁹, the Supreme Court clarified that when **parliament delegates the discretion** to the executive regarding the timing of a law's enforcement, the judiciary cannot issue directives compelling the executive to implement it. This case set a foundational precedent emphasizing the **boundaries of judicial intervention**.

Building on that precedent, the Court in *Aeltemesh Rein v. Union of India*⁷⁰ reiterated that unless there are **clear and objective standards** guiding how and when the executive must act, the court cannot issue a **writ of mandamus** directing the government to enforce a statute. The absence of such standards leaves the matter within the realm of **executive discretion**, beyond the judiciary's scope of compulsion.

In the case of *Tata Cellular v. Union of India*⁷¹, the main issue was whether the judiciary should interfere in the process of awarding government contracts, particularly in tender-related matters. The court emphasized that there should be judicial restraint in interfering with administrative actions, particularly in technical matters such as the award of tenders. The judiciary should not function as an appellate authority but should focus on whether the decision-making process was lawful and reasonable.

Similarly, in *Union of India v. Shree Gajanan Maharaj Sansthan*⁷², the Court further reinforced this principle. It held that **where the executive has been vested with discretionary authority**, and no rigid legal framework governs the exercise of that power, **judicial**

⁶⁹ (1982) 1 SCC 271

⁷⁰ (1988) 4 SCC 54

⁷¹ (1994) 6 SCC 651

⁷² (2002) 5 SCC 44

intervention is not appropriate. Courts must respect the **latitude granted to the executive** by the legislature in such cases. Together, these decisions uphold the doctrine of **judicial restraint** and affirm that courts must respect the **separation of powers**, especially when the executive is exercising discretion granted by statute without clearly defined legal constraints.

Conclusion

The relationship between judicial interpretation, executive discretion, and the principle of separation of powers forms a critical cornerstone in any constitutional democracy. While it is essential for government authorities—particularly in complex areas like public procurement—to have a reasonable degree of discretion to operate efficiently, such discretion **must not be unfettered. Judicial oversight serves as a crucial check**, ensuring that executive powers are used **equitably, transparently, and without bias.**

However, courts must exercise **institutional restraint**, refraining from overstepping into administrative decisions, especially where specialized bodies act **within legal bounds and follow due process.** The separation of powers doctrine mandates **mutual respect among the three branches of government**, each staying within its constitutionally defined role.

In this context, a **nuanced approach** is vital—one that **honours executive independence, enforces legal accountability, and preserves the rule of law.** Such equilibrium not only strengthens good governance but also bolsters **public confidence in democratic institutions** and their functioning.

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