



Long Article

Obstructing Judicial Overreach in Respect of Legislative Supremacy in India: A Study of Supreme Court Judgments

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Abstract: *One of the principal tenets of the doctrine of separation of powers postulates that none of the three organs of the government may usurp the powers of another organ. The autonomy, independence, and exclusivity of the three organs in their respective domains, enable stable governance in a country. The power of judicial review is exercised by the courts of India to determine the constitutionality of any executive, legislative, or judicial action or decision. It is a possibility that in the course of exercising this power, the courts may transgress the limitations placed upon them by the Constitution of India, and pronounce judgments or prescribe directions that encroach upon the powers of the executive and/or the legislature, thereby deviating from, and ergo, defeating the object of the doctrine of separation of powers. In order to prevent an overreach of such nature, the Supreme Court of India has recognized the constitutional fetters on the power of judicial review as regards executive and/or legislative actions. The opening tenet implicates the corollary that no court may direct an executive authority to frame rules or a legislative entity to enact laws, for that would amount to a clear transgression of the constitutional limitations on part of the judiciary. A multitude of judgments on the subject, pronounced by the Supreme Court, has been studied from the aforesaid standpoint, to understand the nuances of the stance of the apex court of the country on the immediate issue. In rendering the judgments, the Supreme Court often referred to and thereupon championed the concept of legislative supremacy, the doctrine of separation of powers, and the fetters imposed upon the power of judicial review by the Constitution of India. A collective analysis of the said judgments reveals the contribution of the Supreme Court in construing judicial overreach, and consequently, obstructing the same through the application of judicial restraint.*

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1. Introduction: Legislative Supremacy and Fetters on Judicial Review

The doctrine of “parliamentary sovereignty” is an essential characteristic of the Constitution of the United Kingdom (UK). The doctrine advocates that the UK Parliament is the supreme legal authority in the country and that it can formulate and repeal any law. It is also a recognised principle under the doctrine that no Parliament may enact laws which bar future Parliaments from amending or repealing any law. Moreover, in the general scheme of things, no court may overrule a piece of legislation enacted by the Parliament.¹ Incongruent to the doctrine of parliamentary sovereignty provided for in the UK Constitution, the Parliament of India is not a sovereign entity. Nevertheless, the Indian Parliament is supreme in its own sphere of activity. The Constitution of India (*hereinafter* ‘Constitution’), which is the *suprema lex*,² provides for the composition, powers and functions of the Parliament. The primary function of the Indian Parliament is to enact laws, subject to the limitations imposed by the Constitution and the procedure provided therein, in respect of the constitutional mandate, and to serve public demands for new laws or amendments to the existing laws, or with regard to any social, cultural, economic, environmental and/or other prevailing issues. Furthermore, constitutional amendments are subject to another condition that such amendments cannot alter the “basic structure” of the Constitution, and this condition acts as a limitation on the amending power of the Parliament.³

The Supreme Court of India (*hereinafter* ‘Supreme Court’) and the High Courts of the states of India are entrusted with the power of judicial review which extends to adjudicating upon the constitutionality of a piece of legislation as well as the legality of an executive action.⁴ Judicial review has been extended to the reviewability of constitutional amendments by virtue of the doctrine of basic structure.⁵ The Supreme Court has declared judicial review to be a basic feature of the Constitution.⁶ Even in the sphere of administrative law, judicial review has been thoroughly active. However, judicial review is exercised subject to certain restrictions. The courts of India do not interfere with policy matters of the executive unless the policy is against either the Constitution or some statute,⁷ or is motivated by *mala fide* intentions.⁸ With respect to the

¹ Frederick Pollock, ‘Sovereignty in English Law’ (1894) 8(5) HLR 243

² *Minerva Mills Ltd & Ors v Union of India & Ors* AIR 1980 SC 1789

³ *Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr* AIR 1973 SC 1461

⁴ Soli J Sorabjee, ‘Introduction to Judicial Review in India’ (1999) 4(2) *Judicial Review: A Quarterly Journal* <<https://doi.org/10.1080/10854681.1999.11427060>> accessed 13 April 2021.

⁵ *Kesavananda Bharati* (n 3)

⁶ *Minerva Mills* (n 2)

⁷ *Sidbeshwar Sabakari Sakbar Karkhana Ltd v Union of India and Ors* [1999] Appeal (Civil) 5866 (SC)

⁸ *S Pratap Singh v The State of Punjab* AIR 1964 SC 72

legislature and its legislative powers, there is a presumption of constitutionality when the validity of a statute is challenged. As stated by Fazl Ali, J., it is presumed that an enactment is constitutional and the burden is upon the party who challenges such enactment, to show that it transgresses the constitutional principles.⁹ The rule of law requires that the exercise of power by the legislature or by the judiciary or by the government or by any other governmental authority must be in consonance with the provisions of the Constitution. Judicial review is, thus, the touchstone and repository of the supreme law of the land, which, at the same time, is not absolute and is subject to limitations which have evolved, over the course of time, through various decisions pronounced by the courts of India.

The doctrine of separation of powers, as propounded by Montesquieu, ensures that no organ of the government may act in a manner detrimental to the autonomy of another organ. It is well-settled that no organ enjoys superiority over the others and therefore, the legislature does not enjoy supremacy over the judiciary and *vice versa*. The three organs of the government work together to protect the rights and interests of the people of India, and in the present context, what is pertinent to observe and take into account is that there cannot be any encroachment upon the powers or functions of one organ of the government by another organ as per the constitutional mandate. Therefore, any usurpation of the law-making power of the legislature by the courts will be deemed to be unconstitutional. In the case of *Divisional Manager, Aravali Golf Club v. Chander Hass*¹⁰, the Supreme Court referred to the doctrine of separation of powers and it emphasised upon the dangers associated with any deviation from the doctrine. In the instant case, a two-judge bench of the Court said that the judiciary was “rightly criticised for ‘overreach’ and encroachment upon the domain of the other two organs”, *i.e.*, the legislature and the executive.¹¹ This introduces us to a conflict between legislative supremacy and judicial review. If the doctrine of separation of powers is to be followed in the truest sense of the word, then any encroachment upon the powers of the legislature by the judiciary shall be unconstitutional and hence, such an action shall be liable to be declared nugatory. Any transgression of powers by the judiciary in the garb of judicial review shall, therefore, be inconsistent with the tenets of the Constitution and be inhibitive of the ideals of the doctrine of separation of powers. In this regard, it is crucial to observe that reverence to the mandate of the Constitution will command an obligatory adherence to the doctrine of separation of powers, which will, in turn, secure the independence and autonomy of each organ of the government. This article undertakes an extensive study of a multitude of judgments pronounced by the

⁹ *Charanjit Lal v Union of India* AIR 1951SC 41

¹⁰ *Divisional Manager, Aravali Golf Club v Chander Hass* (2008) 1 SCC 683

¹¹ *Ibid* [21]

Supreme Court over the course of the past decades, in order to understand its inclination as regards the issue at hand, and it further examines the constitutional limitations on judicial review, on the basis of the said judgments.

2. A Study of Judgments Pronounced by the Supreme Court of India

2.1. State of Himachal Pradesh and Ors. v. Satpal Saini¹²

The Himachal Pradesh High Court had issued a writ of *mandamus* and directed the State Government of Himachal Pradesh to make amendments to Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 read with Himachal Pradesh Tenancy and Land Reforms Rules, 1975, within a period of ninety days from the day of passing of the judgment, in order to facilitate the purchase of agricultural and non-agricultural land in Himachal Pradesh by non-agriculturalist Himachalis residing in the state for decades together prior to the commencement of the Act. Aggrieved by such issuance, the State Government of Himachal Pradesh contended that the directions encroached upon the sovereign legislative power of the State Legislature and thereby challenged the same through an appeal to the Supreme Court.

A bench comprising of Justice A.M. Sapre and Justice D.Y. Chandrachud of the Supreme Court observed that in issuing the directions, the High Court of Himachal Pradesh acted in a manner which is contrary to the settled limitations on the power of judicial review under Article 226 of the Constitution of India. Holding the grievance to have a sound constitutional foundation, the Supreme Court stated that it is well-settled that a direction cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary power and it is vested in the Indian Parliament and the State Legislatures under Article 245 and Article 246 of the Constitution of India. Article 245(1) vests Parliament with the power to make laws for the whole or any part of the territory of India, and the legislatures of the states are endowed with the power of enacting laws for the whole or any part of the respective states. Article 246(2) vests the State Legislatures with the power to make laws with respect to any of the matters enumerated in List III or the Concurrent List of the Seventh Schedule to the Constitution. Article 246(3) vests the State Legislatures with the exclusive power to make laws for such state or any part thereof with respect to any of the matters enumerated in the List II or 'State List' of the Seventh Schedule to the Constitution. As per the Supreme Court, the legislature, as the repository of the sovereign legislative power, is vested with the authority to determine whether a law should be enacted.

¹² *State of Himachal Pradesh and Ors. v Satpal Saini* (2017) 11 SCC 42

The Supreme Court laid emphasis on the doctrine of separation of powers by virtue of which the judiciary could determine the validity of any legislation enacted by the legislature. The Court said that when any matter involving legislative competence or constitutionality of any legislation passed by the legislature is brought before the High Court under Article 226 or the Supreme Court under Article 32, the courts may uphold or strike down the validity of such legislations. The Court further added that the legislature has to perform the function of determining whether a law should be enacted or not and the judiciary cannot, by virtue of judicial review, encroach upon such a constitutional function. It is a matter of legislative policy to determine whether a particular provision of law upholds the object of the law or if it should be amended. The Court held that it cannot direct the legislature either to enact a law or to amend a law which it has enacted, because of the reason that this constitutional function lies in the exclusive domain of the legislature. The Court, therefore, held that the Himachal Pradesh High Court had usurped the power of the State Legislature of Himachal Pradesh when the former directed the latter to make amendments to the aforementioned provisions. The Court also held that the High Court had transgressed the limitations imposed upon the power of judicial review vested in it under Article 226 of the Constitution of India. The Supreme Court further said that the State Legislatures make laws by taking into consideration the prevalent societal problems and to resolve issues that evoke concern and that the courts do not sit in judgment over legislative expediency or legislative policy.

2.2. Mallikarjuna Rao and Ors. v. State of Andhra Pradesh and Ors.¹³

Rule 6 of the Andhra Pradesh Animal Husbandry Service Rules, 1961 stipulated qualifications for promotion to Class IV posts in the Andhra Pradesh Animal Husbandry Department, and provided that only those Veterinary Assistant Surgeons would be eligible to be promoted to the posts, who fulfilled the requirement of specialised training provided under the said Rule. The constitutionality of Rule 6 was challenged on the ground that it contravened Article 14 of the Constitution. The petitioners contended that the government could exercise arbitrary powers in choosing any person for specialised training. The Andhra Pradesh High Court declared Rule 6 to be *intra vires*, and at the same time, ‘advised’ the Animal Husbandry Department to draft a rule under the 1961 Rules, so as to reduce the power of discretion of the authorities in choosing persons for specialised training. Subsequently, the State Government of Andhra Pradesh amended Rule 6 to the effect that the 1961 Rules were superseded by the Andhra Pradesh Animal Husbandry — Special Rules, 1977. A petition was filed before the Andhra Pradesh Administrative Tribunal wherein it was prayed that the ‘Special Rules’ be amended. The Tribunal referred to the judgment of the Andhra Pradesh High Court where-in Rule

¹³ *Mallikarjuna Rao and Ors. v State of Andhra Pradesh and Ors.* AIR 1990 SC 1251

6 of the 1961 Rules was declared to be *intra vires*, and allowed the petition along with issuing the directions as sought by the petitioners. The Tribunal declared that even an observation made by the High Court was binding on the State Government, and further directed the State Government to formulate a rational method of ascertainment of seniority among the Veterinary Assistant Surgeons for the purpose of their promotions. The State Government of Andhra Pradesh was aggrieved by this order and filed an appeal against it before the Supreme Court.

The Supreme Court declared that the observations of the Andhra Pradesh High Court were merely ‘advisory’ in nature and that the High Court had acted within the limits of Article 226 of the Constitution in rendering the judgment. On the other hand, the Andhra Pradesh Administrative Tribunal was held to have transgressed its authority in issuing the aforesaid directions. The Supreme Court asserted that a High Court or an Administrative Tribunal cannot issue a direction to a State Government to frame rules. The legislative power under Article 309 of the Constitution is vested exclusively in the President and the Governor of the states. Delivering the judgment, Kuldip Singh, J. said that the courts cannot abrogate or direct the exercise of the rulemaking powers by the executive. Additionally, it was asserted that the courts cannot assume a supervisory role over the legislative power of the executive provided for under Article 309 of the Constitution.

2.3. V.K. Sood v. Secretary, Civil Aviation and Ors.¹⁴

The petitioner was an applicant for recruitment to the post of Examiner of Personnel in the Department of Civil Aviation. He challenged the qualifications advertised for recruitment to the said post as being discriminatory. The contention of the petitioner was that he would have qualified under the 1969 Rules which were originally framed under the proviso to Article 309 of the Constitution, but the amendments to the Rules made in 1978 and 1989 were enacted with the object of excluding him from the process of recruitment. The petitioner urged for the Supreme Court to regulate the prescription of qualifications.

The Supreme Court said that it is for the rule-making executive authority or for the Parliament or the State Legislatures to regulate the process of recruitment, lay down qualifications, etc. for appointment to an office or post under the State. The Court affirmed that it cannot encroach upon the powers of the rule-making executive authority or the legislature and lay down qualifications for such recruitment, especially in matters that bear a technical nature.

¹⁴ *V.K. Sood v Secretary, Civil Aviation and Ors.* AIR 1993 SC 2285

2.4. State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla and Ors.¹⁵

The guardian of a student who was studying in a medical college submitted an application to the Chief Justice of the Himachal Pradesh High Court stating that his ward had been a victim of ragging in the medical college. A letter received by him from his son was also attached. The Court treated the documents as constituting the memo of writ petition. A division bench of the Court came to the conclusion that incidents of ragging were commonplace in the college. The High Court directed for the constitution of an Anti-Ragging Committee which would make recommendations as to the measures that could be taken to curb the menace of ragging. The committee recommended for the initiation of a law by the State Government which would make ragging a cognizable offence and under which, punishments would be prescribed for the offences. The High Court, as per the recommendation, directed the State Government to make legislation on ragging and gave it a time of six months to accomplish the task. The Supreme Court held that it is for the executive to decide whether or not to introduce any particular legislation, and that the Court could not direct the executive or the legislature to enact laws on a subject howsoever necessary or desirable it might deem it so.

2.5. Asif Hameed & Ors. v. State of Jammu & Kashmir & Ors.¹⁶

The petitioners challenged in the High Court of Jammu and Kashmir, the selection of candidates to the MBBS and BDS courses in two government medical colleges of Jammu and Kashmir for the academic session of 1988-1989. The primary contention of the petitioners was that the selection process was not in consonance with the directions issued by the High Court in the case of *Jyotsbana Sharma and Ors. v. State of Jammu and Kashmir*, which was decided by the Court on April 17, 1979. In *Jyotsbana Sharma*, the High Court had issued directions to the State Government of Jammu and Kashmir to constitute a statutory body for selections to the aforementioned medical colleges. The State Government complied with the direction of the Court and in pursuance of such compliance, issued two orders, prescribing therein the constitution of a 'Competent Authority' for undertaking the process of selection to the aforesaid courses, and also specifying the qualifications, functions, conditions of service, powers and duties, etc. of the said authority. The High Court observed that the selection process in the instant case was not in adherence to the directions stipulated by it in *Jyotsbana Sharma*, and thereafter, issued a writ of *mandamus* to effectuate the abidance to the previously rendered directions. The State of Jammu and Kashmir contended that the High Court was bereft of

¹⁵ *State of Himachal Pradesh v A Parent of a Student of Medical College, Simla and Ors.* AIR 1985 SC 910

¹⁶ *Asif Hameed & Ors. v State of Jammu & Kashmir & Ors.* AIR 1989 SC 1899

competence to direct the State Government as regards selections to medical colleges. It also contended that the observations made by the High Court in *Jyotshana Sharma* were merely suggestive in nature.

The Supreme Court held that even though the doctrine of separation of powers is not explicitly mentioned in the Constitution, the functions of the executive, legislature and judiciary have been demarcated in it. The Court also observed that the power of judicial review must be exercised with a self-imposed discipline of judicial restraint. The judiciary has the power to ascertain whether the executive and the legislature are acting as per the constitutional mandate, and if such actions are found to be unconstitutional, then such actions can be struck down by the Court. The Court added that as long as the legislature or the executive does not transgress the powers vested in them by the Constitution, the judiciary cannot issue directions to the executive authorities in matters of policy or the legislature in matters of legislation. The Court asserted that it would not be acting in the capacity of an appellate authority while reviewing executive actions. The Supreme Court declared that in *Jyotshana Sharma*, the Jammu and Kashmir High Court had committed an error in issuing directions concerning selection to the two medical colleges, and in reiterating the same in the instant case. The Supreme Court emphasised on the point that the legislature is supreme in its sphere of activity and that the legislature has the exclusive power to determine when to enact a law and the subject matters thereof.

2.6. Union of India v. Association for Democratic Reforms¹⁷

The Association for Democratic Reforms filed a petition before the High Court of Delhi. In a previous instance, certain recommendations on increasing fairness, transparency and equitability of the electoral process in India were produced by the Law Commission at the request of the Government of India. The recommendations provided that the Election Commission should require all electoral candidates to disclose personal background information to the public, including criminal history, educational qualifications, personal financial details and other information necessary for judging a candidate's past records and present capability. The petition of the Association for Democratic Reforms was filed in order to compel implementation of the said recommendations. The High Court of Delhi ordered the Election Commission to obtain the aforementioned information for the benefit of the voters by stating that a candidate's background should not be kept in the dark, because such a practice would not be in the interest of democracy. The Union of India challenged the decision through an appeal to the Supreme Court of India, arguing that the Election Commission and the High Court did not have such powers and that voters did not have a right to such

¹⁷ *Union of India v Association for Democratic Reforms* AIR 2002 SC 2112

information. The Supreme Court pronounced that the Court could not direct the amendment of any legislation or that of any statutory rule. The power to amend any legislation or rule was vested in the Parliament. The Supreme Court added that no direction could be given which were contrary to the said legislation or rules. Further, if any legislation or rule was silent on a particular subject matter, and the authority entrusted with the duty to implement the same exercised constitutional or statutory power to undertake the said activity, then the Supreme Court could issue directions or orders on the subject, in order to “fill the vacuum or void”, till legislation in that regard was enacted.¹⁸

2.7. Supreme Court Employees’ Welfare Association v. Union of India¹⁹

An excerpt from the Supreme Court judgment, relevant to the ongoing discourse, is reproduced as under:

“There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.”²⁰

2.8. State of Jammu and Kashmir v. A.R. Zakki and Ors.²¹

The Governor of Jammu and Kashmir had framed the Jammu & Kashmir Civil Services (Judicial) Recruitment Rules, 1967 which provided for recruitment to the KCS Judicial Service. Rule 4 of the said Rules mandated that the selection for appointment to the service was to be made by direct recruitment on the basis of competitive examination conducted by the commission. The readers and librarians employed in the Jammu and Kashmir High Court submitted a representation to the Chief Justice of the High Court claiming that they did not have any prospects of future promotion in their service owing to the subsistence of the Rule, and they also prayed for a fixed quota to be reserved for the employees of the High Court for recruitment to the service. Jammu and Kashmir High Court directed for the substitution of Rule 4 of by Rule 4(1), the content of which was proposed by it. The Court also proposed the insertion of a new Chapter, ‘Chapter IV-A’, in the Second Part of the Rules in order to prescribe the procedure for recruitment by promotion or transfer.

¹⁸ *Association for Democratic Reforms* (n 17)

¹⁹ *Supreme Court Employees’ Welfare Association v Union of India* (1989) 4 SCC 187

²⁰ *Ibid*

²¹ *State of Jammu and Kashmir v A.R. Zakki and Ors.* AIR 1992 SC 1546

The Supreme Court pronounced that a writ of *mandamus* cannot be issued to the legislature to enact a particular legislation. The Court observed that the rulemaking power of the executive is in the nature of subordinate legislation, which is endowed with the administrative bodies through delegated authority of the legislature. The Supreme Court reiterated the same principle as above and declared that no writ of *mandamus* can be issued by the High Court against the State Government while it is enacting subordinate legislation by virtue of delegated legislative authority.

2.9. V.K. Naswa v. Home Secretary, Union of India and Ors.²²

The petitioner filed a writ petition before the Supreme Court claiming that several public figures including Baba Ramdev, Anna Hazare, Kiran Bedi, etc. had insulted the national flag of India, thereby contravening certain provisions of the Flag Code of India, 2002, with a view to gain political advantage and for availing commercial benefits. The petitioner prayed before the Court that an amount of ten crore rupees be deposited by the respondents in the Prime Minister's Relief Fund. The petitioner also urged the Court to issue directions to the Central Government to introduce amendments to the Flag Code of India, 2002, in fulfilment of the recommendations forwarded by the petitioner himself.

The Supreme Court held that the question concerning whether any disrespect was shown to the flag or not, invokes determination of the facts, which was beyond the scope of writ jurisdiction. The Court further declared that there is a limited scope of judicial intervention in order to provide temporary solution to cover the relevant field in exceptional circumstances until the time the legislature performs its role of enacting a law. In other cases, the Court can neither legislate nor can it direct the legislature to legislate on a particular matter. The Court stated that it has a "very limited role and in exercise of that, it is not open to have judicial legislation."²³ The Court supplemented its stance by holding that courts do not have the competence to legislate or to direct the legislature to formulate legislation in a particular manner. Dismissing the writ petition, the Supreme Court observed that the case did not warrant any judicial intervention.

2.10. Gaiinda Ram and Ors. v. M.C.D. and Ors.²⁴

The Supreme Court of India had given an irregular judgment wherein it had directed the appropriate government to legislate and bring out a law within June 30, 2011, to regulate hawking and the hawkers'

²² *V.K. Naswa v Home Secretary, Union of India and Ors.* (2012) 2 SCC 542

²³ *Ibid* [19]

²⁴ *Gaiinda Ram and Ors. v M.C.D. and Ors.* (2010) 10 SCC 715

fundamental right and to enable the hawkers to know the contours of their fundamental right. Until then, the problem of hawking and street vending could be regulated by the then existing schemes framed by the New Delhi Municipal Council and the Municipal Corporation of Delhi. The Court said that the direction was in exercise of its jurisdiction to protect the fundamental rights of the citizens.

This decision of the bench consisting of two judges was struck down by a constitution bench of the Supreme Court in the case of *Manoj Narula v. Union of India*,²⁵ wherein it was held that the power to make a decision regarding the amendment of any provision of a particular law rest solely with the legislature. The Court declared that the decision in *Gainda Ram and Ors. v. M.C.D. and Ors.*²⁶ was irregular with the previously rendered judgments of larger benches of the Court. The Supreme Court asserted that the directions issued in *Gainda Ram* were unsustainable.

3. Collective Analysis of the Judgments

A study of the aforementioned Supreme Court judgments throws light on the fact that the Court has, time and again, emphasised on the separation of powers of the three organs of the government. In *Asif Hameed*, the Court has gone to the extent of saying that the legislature is supreme and sovereign in its own sphere, under the constitutional mandate.²⁷ The Court also declared that it is exclusively for the legislature to consider as to when and in respect of what subject matter, laws are to be enacted, and that the Court does not reserve in itself any power to issue directions to the legislature in that regard.²⁸ In addition to courts, the tribunals are also devoid of the power to direct administrative bodies to frame rules, as was declared in *Mallikarjuna Rao*.²⁹ The Supreme Court has affirmed the independence of the legislature and the executive from the usurpation of powers by the judiciary, thereby championing the doctrine of separation of powers.

While emphasising on the doctrine of separation of powers, the Supreme Court has observed that even though the doctrine is not explicitly mentioned in the Constitution or strictly adhered to in the scheme of governmental organisation in India, as it is done in the United States of America, there can be no doubt about the fact that the Constitution mandates delimitation of powers and functions among the three organs of the government and prohibits any encroachment upon such powers or functions of one organ by any other

²⁵ *Manoj Narula v Union of India* (2014) 9 SCC 1

²⁶ *Gainda Ram* (n 24)

²⁷ *Asif Hameed* (n 16)

²⁸ *Ibid*

²⁹ *Mallikarjuna Rao* (n 13)

organ.³⁰ Wade and Phillips interpreted the doctrine of separation of powers and opined that the doctrine of separation of powers may imply three things, *i.e.*, one organ of the government shall not control another organ; one organ of the government shall not be a part of another organ; and one organ of the government shall not perform the functions of another organ.³¹ In this respect, the view of the Supreme Court in reiterating the extent of judicial review may be noted. In *Satpal Saini*³², a division bench of the Supreme Court stated that the three branches of the government are equal to each other and have been assigned certain powers and functions by the Constitution. One of the functions of the judiciary is to determine if the executive actions are in accordance with the existing laws, and to ensure their conformance to the same. The judiciary also has to ensure that the laws and the executive decisions are in compliance with the constitutional mandate. The Supreme Court said that the executive is entrusted with the duty of formulating policies. The executive is responsible to the legislature, which in turn, is responsible to the people of India. Thus, the courts do not possess the power to formulate policies or to mandate that a particular policy should be followed.

The limitations placed upon judicial review which is provided for under Article 226 of the Constitution have also been taken into consideration by the Supreme Court and it has asserted that the courts do not possess the authority to direct an administrative or executive body to devise policies, or a legislative entity to draft legislation. In the event the courts assume the power of issuing directions to the executive to formulate policies, or to the legislature to enact legislation or any amendment thereof, such a direction would transgress the limits of the power of judicial review conferred by Article 226 of the Constitution. An action of that ilk would contravene the fetters placed in obedience to the constitutional mandate and would invariably amount to judicial overreach. The Supreme Court further observed that the policies adopted by the executive are subject to the accountability which it owes to the people. Any incorrect policy decision should result in the executive being accountable to the people for its decisions. The Supreme Court emphasised on the restrictions placed on judicial review and observed that such limitations are necessary to obstruct judicial review from transmuting into judicial overreach. The Supreme Court asserted that such restrictions must be maintained and should be enforced without any exception.

The aforementioned observations compel a reiteration of the significance of the doctrine of separation of powers which, even though is not followed in India in *sensu stricto*, facilitates the demarcation of powers to be exercised and functions to be discharged by the three organs of the government. In order for well-ordered

³⁰ *Indira Nehru Gandhi v Shri Raj Narain & Anr* AIR 1975 SC 2299

³¹ CK Takwani & MC Thakker, *Lectures on Administrative Law* (5th edn, Eastern Book Company 2014) 34

³² *Satpal Saini* (n 12)

governance to exist, every organ of the government should obey the constitutional mandate and perform their constitutional duties not merely in letter, but also in spirit. This obligation is binding uniformly on the executive, legislature, and the judiciary. Therefore, in the course of discharge of their functions, every organ must examine the possible repercussions of their actions, and if it is predicted that any of their actions is likely to threaten the autonomy, independence or exclusivity of another organ, then such action must be discarded or be performed with self-imposed restraint. This postulation holds true for the judiciary; and while the organ may exhibit tendencies to encroach into the realm of executive policymaking and/or rulemaking, or the formulation and/or enactment of legislation by the legislature, it cannot, in practice, carry through such an exercise. As duly recognised and proclaimed by the Supreme Court, the restriction imposed upon the judiciary as regards encroachment into the exclusive domains of the executive and the legislature is clear and definite, and overreach of no kind in this respect may be permitted.

4. Conclusion

The Parliament and State Legislatures of India are vested with the authority, competence and power by the Constitution, to enact any law that they deem necessary or expedient. Even though the legislative organ of the government might not enjoy a sovereign status like that of the UK Parliament, it is, nonetheless, supreme in the domain of enacting legislation. In the field of law-making, the legislature enjoys an indomitable status, provided that the process of legislation or the subject matter of any law is not inconsistent with the constitutional mandate. By virtue of the power of judicial review conferred by the Constitution, the judiciary can determine the constitutionality of an executive, legislative or judicial action or decision, but it cannot go to the extent of directing the legislature to enact laws or mandate for a policy to be adopted. The exercise of the power of judicial review should be done with self-imposed judicial restraint. Therefore, any direction by a court to the legislature to enact a law or to amend any of the provisions of an existing law shall go against the limitations of judicial review under Article 226 of the Constitution.

The doctrine of separation of powers secures the independence of each organ of the government from any form of control, usurpation or intrusion by the other organs. By virtue of the system of checks and balances, it is ensured that no organ of the government transgresses the limitations that are placed upon them by the Constitution. An analysis of the judgments referred to in this Article establishes the fact that the Supreme Court has recognised the doctrine of separation of powers on multiple occasions, and has further affirmed that in order for efficient and unhindered governance to prevail, each organ should abide by the doctrine, and that it should be ensured that no organ arrogates the powers of another organ. Any encroachment upon the

powers of the legislature by the judiciary would amount to transgression of powers on part of the latter and would amount to judicial overreach. The judiciary has to compulsorily adhere to the fetters placed upon the power of judicial review and therefore, it can only adjudicate upon the constitutionality of a legislative action. Consequently, an act of the judiciary to direct the legislature to enact laws on any subject matter or to make amendments to an existing law would be in contravention of the tenets enshrined, albeit implicitly, in the Constitution.