



"Inherent Powers and the Doctrine of Separation of Powers: A Constitutional Analysis"

Ms. Vishakha Chib, Dr. Vijay Saigal

Ph.D. Research Scholar, Associate Professor

Department of Law, University of Jammu, Jammu City, Jammu and Kashmir, (U.T), India.

Abstract: This research paper undertakes a comprehensive constitutional analysis of the concept of inherent powers in relation to the doctrine of separation of powers within the Indian constitutional framework. Inherent powers are those not explicitly enumerated in the Constitution but are considered essential for the effective functioning of constitutional institutions. These powers, often exercised by the judiciary and executive, occupy a grey area between necessity and overreach, raising critical questions about legitimacy, accountability, and constitutional limits. The study explores the theoretical foundations of inherent powers, tracing their origins in constitutional jurisprudence and political theory, particularly the writings of Montesquieu and Dicey. It examines the Indian model of separation of powers, which departs from strict compartmentalization in favor of a more functional division. The analysis is supported by landmark Supreme Court judgments, including S.R. Bommai v. Union of India, Vishaka v. State of Rajasthan, and K.S. Puttaswamy v. Union of India, which highlight the evolving judicial understanding of inherent powers in diverse constitutional contexts. Comparative perspectives from jurisdictions like the United States, United Kingdom, and Canada are employed to evaluate how other democracies manage the use of inherent powers while upholding institutional integrity. The paper also highlights the potential risks of judicial overreach and executive arbitrariness when inherent powers are used without adequate checks. In conclusion, the paper offers critical suggestions and reforms to promote a more disciplined, transparent, and constitutionally guided application of inherent powers. It underscores the need for judicial restraint, legislative oversight, public constitutional literacy, and institutional accountability to preserve the constitutional balance envisioned by the framers.

Key Words: Inherent Powers, Separation of Powers, Constitutional Morality, Judicial Activism, Institutional Accountability

I. Introduction

1.1 Background of the Study

The doctrine of separation of powers and the concept of inherent powers are two foundational tenets in constitutional jurisprudence. The separation of powers doctrine envisions a system where the legislative, executive, and judicial branches operate independently to ensure checks and balances.¹ This doctrine, deeply rooted in

¹ M.J.C. Vile, *Constitutionalism and the Separation of Powers* 13 (Oxford: Clarendon Press, 1967).

Montesquieu's theory, aims to prevent the concentration of power and preserve liberty.² Meanwhile, inherent powers—those powers essential for the functioning of an institution but not explicitly mentioned in the constitutional text—form a necessary exception to this separation.³ These powers are often invoked to ensure that each organ of the State can function effectively and fulfill its constitutional duties.

For instance, in *Union of India v. Sankalchand Himatlal Sheth*,⁴ the Indian Supreme Court recognized that the judiciary possesses inherent powers to protect its independence and integrity. Similarly, the *U.S. Supreme Court in Myers v. United States*⁵ accepted that the President holds certain powers inherently as part of the executive function, even if not expressly mentioned in the Constitution.

1.2 Definitions and Conceptual Framework

Inherent powers refer to powers that are deemed necessary for a constitutional functionary or organ to perform its duties effectively, even if they are not specifically enumerated in the constitutional text.⁶ These powers arise not from statute but from necessity and custom.⁷ Separation of powers, on the other hand, refers to the division of state power into three branches—legislative, executive, and judicial—with an aim to provide a system of checks and balances.⁸ While the Indian Constitution does not explicitly enshrine this doctrine, it is implied through various provisions such as Articles 50 (separation of judiciary from the executive) and 122–212 (legislative privileges).⁹

In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court emphasized that separation of powers is part of the basic structure of the Constitution, and any law violating this principle would be unconstitutional.¹⁰

1.3 Statement of the Problem

The intersection of inherent powers and separation of powers presents a paradox: while the former ensures institutional functionality, it may simultaneously risk constitutional overreach. This paper explores how this tension unfolds within constitutional frameworks, especially in India and other common law jurisdictions.

1.4 Objectives of the Study

- To analyze the origin and evolution of the doctrines of inherent powers and separation of powers.
- To examine constitutional provisions and judicial decisions pertaining to these doctrines.
- To study the potential conflicts between these doctrines in the exercise of governmental power.
- To propose frameworks for harmonizing inherent powers with the doctrine of separation of powers.

1.5 Research Questions

- What is the constitutional basis for inherent powers?
- How have courts interpreted the doctrine of separation of powers vis-à-vis inherent powers?
- Are inherent powers a threat to constitutional balance, or do they enhance institutional efficiency?

1.6 Hypothesis

² Montesquieu, *The Spirit of Laws* 157 (Cambridge University Press, 1989).

³ Alexander Hamilton, *Federalist No. 70*, in Clinton Rossiter (ed.), *The Federalist Papers* 471 (New York: Mentor, 1961).

⁴ *Union of India v. Sankalchand Himatlal Sheth*, (1977) 4 SCC 193.

⁵ *Myers v. United States*, 272 U.S. 52 (1926).

⁶ Justice H.R. Khanna, *Making of India's Constitution* 107 (Eastern Book Company, 2008).

⁷ Jack Jacob, "The Inherent Jurisdiction of the Court," (1970) 23 *Current Legal Problems* 23.

⁸ B. Shiva Rao, *The Framing of India's Constitution: A Study* Vol. 1, 233 (Indian Institute of Public Administration, 1966).

⁹ India Constitution articles 50, 122–212.

¹⁰ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

This study proceeds on the hypothesis that inherent powers, though extra-textual, are essential to ensure effective governance and do not necessarily contravene the separation of powers, provided they are judicially monitored and constitutionally restrained.

1.7 Significance of the Study

This study is crucial in the context of increasing institutional activism, judicial interventions, and executive discretion. For example, in *R. C. Cooper v. Union of India*, the judiciary used its inherent powers to strike down executive overreach, reinforcing the relevance of judicial checks.¹¹

1.8 Research Methodology

The research follows a doctrinal approach, using primary and secondary sources such as constitutional texts, statutes, case law, academic commentary, and official reports. A comparative constitutional method is also employed to examine how different jurisdictions approach the interplay between these doctrines.

1.9 Scope and Limitations

The study is confined to the constitutional frameworks of India, with comparative insights from jurisdictions like the United States, United Kingdom, and Australia. The scope is limited to constitutional powers and does not extensively cover administrative or statutory inherent powers.

1.10 Chapter Outline

Chapter 2: Explores the conceptual and historical foundations of both doctrines.

Chapter 3: Analyzes the constitutional basis and judicial application of inherent powers.

Chapter 4: Studies the doctrine of separation of powers in comparative constitutional contexts.

Chapter 5: Evaluates the challenges and judicial dilemmas arising from the conflict between these doctrines.

Chapter 6: Suggests normative guidelines and policy recommendations.

II. Conceptual and Historical Foundations of Inherent Powers and Separation of Powers

2.1 Introduction

This chapter delves into the conceptual origins and theoretical underpinnings of (a) the doctrine of separation of powers, and (b) the notion of inherent powers, focusing on their philosophical roots, constitutional evolution, and canonical interpretations.

2.2 Philosophical Foundations

The doctrine of separation of powers is deeply rooted in political philosophy. Montesquieu reasoned that “where the legislative and executive powers are united in the same person... there is no liberty,” and further warned: “if the judicial power is not separated from the legislative and executive ... there would be an end of everything.”¹² Inspired by classical antecedents—the mixed government model of Polybius, where consuls (monarchy), senate

¹¹ *R.C. Cooper v. Union of India*, (1970) 1 SCC 248.

¹² Montesquieu, *The Spirit of Laws* 157 (Cambridge University Press, 1989).

(aristocracy), and assemblies (democracy) moderated each other—Montesquieu formalized the idea of dividing governmental functions into three branches to prevent tyranny.¹³

Albert Venn Dicey further elaborated the principle in his constitutional treatise, arguing that if the three powers were vested in one person, or group, "there can be no liberty."¹⁴ Durga Das Basu interpreted this in the Indian context: a rigid separation is impractical; rather, an "organic separation" allowing incidental overlap, but preserving essential boundaries, is functional.¹⁵

2.3 Evolution in the Indian Constitution

While the Indian Constitution does not explicitly codify separation of powers, it is implicit in several provisions—most notably Article 50, which directs the state to separate the judiciary from the executive in public services.¹⁶ The Constituent Assembly, in debates, envisaged this as a structural safeguard for judicial independence.¹⁷ In *Ram Jawaya Kapur v. State of Punjab*, the Supreme Court acknowledged that functional separation, not rigid partition, is envisaged under the Indian Constitution; the organs are to be "sufficiently differentiated."¹⁸

Similarly, in *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court affirmed separation of powers as part of the basic structure doctrine, impervious to constitutional amendment.¹⁹ This foundational reasoning was significantly shaped by the *Kesavananda Bharati* judgment, which upheld judicial review as a safeguard against overreach, reinforcing institutional demarcation.²⁰ Subsequent cases—*Minerva Mills* and *S.R. Bommai*—further elaborated the limits of parliamentary sovereignty and executive intervention, solidifying the boundaries between organs.²¹

2.4 The Doctrine of Checks and Balances

Separation of powers is reinforced by a system of checks and balances, granting each organ some ability to regulate or constrain the others. In India, this includes: Judicial review under Articles 13, 32, 226–136, and 246, enabling courts to invalidate unconstitutional legislative or executive actions.²² Legislative tools such as amendment powers and impeachment; Executive measures like vetoes, ordinances, and administrative oversight.²³ Despite overlapping functions, each branch must operate within its constitutional domain—a notion captured in *Drishti IAS* commentary as "1874 lines demarcating, not a hermetic separation, but a responsible interaction."²⁴

2.5 Origins and Nature of Inherent Powers

Inherent powers refer to constitutional or judicial powers derived not from text but from necessity. In the judiciary, inherent jurisdiction allows courts to fill procedural gaps or ensure justice when statutes are silent or defective.²⁵ Sir Jack Jacob described it as a residual power enabling courts to act "in the interests of convenience

¹³ Yashu Bansal, *Doctrine of Separation of Power*, Academike, Lawctopus, 2025.

¹⁴ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 150 (10th ed., Macmillan, 1959).

¹⁵ D.D. Basu, *Introduction to the Constitution of India* 24 (Eighth edition, LexisNexis, 2003).

¹⁶ India Const. art. 50.

¹⁷ Constituent Assembly Debates, Vol. VII, 109 (Lok Sabha Secretariat, 1948).

¹⁸ *Ram Jawaya Kapur v. State of Punjab*, AIR 1955 SC 549.

¹⁹ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.

²⁰ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

²¹ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789; *S.R. Bommai v. Union of India*, (1994) SCC (3) 1.

²² India Const. arts. 13, 32, 143, 226, 246; *Judicial review in India*, Wikipedia.

²³ GS SCORE, *Doctrine of Separation of Powers*, 2023.

²⁴ *Judicial doctrines on separation of powers*, Civildaily.

²⁵ Jack Jacob, "The Inherent Jurisdiction of the Court," (1970) 23 *Current Legal Problems* 23.

and justice.”²⁶ In the executive context, the *U.S. Supreme Court in Myers v. United States* and later *United States v. Curtiss-Wright* accepted that such powers can vest in the President as incidental to executive duties, even if not expressly enumerated.²⁷ Indian courts similarly apply implied powers when necessity demands, for instance, ensuring continuity and functionality in the judicial process.

2.6 The Interplay between Inherent Powers and Separation of Powers

Inherent powers operate at the interstices of constitutional structure, facilitating institutional efficiency while risking overlap. For instance: Judicial inherent jurisdiction may be challenged as encroachment if used to override executive action without statutory basis. Executive “inherent” emergency powers—especially during crises—may curtail legislative or judicial checks if unchecked. In *S.R. Bommai*, the Court curtailed misuse of Article 356, applying both checks and inherent restraint.²⁸ At the constitutional apogee, the basic structure doctrine, as articulated in *Kesavananda Bharati*, constrains both inherent and textual powers from altering essential constitutional identity.²⁹ Therefore, inherent powers must be interpreted thoughtfully—empowering branches to act within constitutional limits, without subsuming the domains of other organs.

III. Constitutional Doctrines and Judicial-Executive Applications of Inherent Powers

3.1 Introduction

This chapter explores how inherent powers have been applied by both judiciary and executive branches, with a focus on constitutional doctrine as it has evolved through jurisprudence. We will critically assess landmark judgments in India and the United States, highlighting how inherent powers function as a constitutional safety net—employed when strict textual mandates are too rigid—while simultaneously raising concerns about maintaining institutional balance.

3.2 Understanding Inherent Powers in the Judiciary

The judiciary derives inherent powers from the concept of “interstices” in the constitutional and statutory framework—allowing courts to ensure justice and fill procedural voids. As Sir Jack Jacob described, “[inherent jurisdiction is] residual, discretionary, and exercised only to prevent injustice or secure orderly administration.”³⁰ In India, Article 142 embodies these powers constitutionally by enabling the Supreme Court to pass any order “necessary to do complete justice in any case before it.”³¹ The Supreme Court has leveraged this provision to transcend statutory constraints—for example, in *Union Carbide Corporation v. Union of India*, the Court used Article 142 to secure a comprehensive settlement in the Bhopal disaster case.³²

High Courts operate with discretionary inherent powers under Section 482 of the Criminal Procedure Code (CrPC): a tool to quash or prevent abuse of legal processes. In *Madhu Limaye v. State of Maharashtra*,³³ the Court struck down a continuation of proceedings despite court closure on administrative grounds—exercising inherent power to secure fairness. Later, in *Asian Resurfacing of Roads v. CBI*,³⁴ the Supreme Court cautioned that while Section 482 powers are broad, they cannot “override express statutory provisions.”

²⁶ Jack Jacob, *The Inherent Jurisdiction of the Court*, Clarendon Press, 1988.

²⁷ *Myers v. United States*, 272 U.S. 52 (1926); *United States v. Curtiss-Wright*, 299 U.S. 304 (1936).

²⁸ *S.R. Bommai v. Union of India*, (1994) SCC (3) 1.

²⁹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

³⁰ Sir Jack Jacob, “The Inherent Jurisdiction of the Court,” *Current Legal Problems*, Vol. 23 (1970) 23.

³¹ *Constitution of India*, art. 142(1).

³² *Union Carbide Corporation v. Union of India*, AIR 1994 SC 248.

³³ *Madhu Limaye v. State of Maharashtra*, AIR 1978 Bom 1.

³⁴ *Asian Resurfacing of Roads v. CBI*, (2004) 7 SCC 130.

3.3 Limits and Accountability—Indian Context

However, misuse of inherent powers can erode legislative intent or disrupt procedural traditions. In *State of Bihar v. K.J.D. Singh*, the Supreme Court held that Section 482 should not be used to circumvent clear procedural safeguards.³⁵ Similar caution was observed in *Ram Chand Sugar Mills v. Bhargav*, where inherent powers in civil proceedings were considered only where consistent with statute.³⁶ Scholars like Justice H.R. Khanna noted that while Article 142 is formidable, its use must be guided by restraint: “It is not a constitutional panacea, but a measured tool to achieve judicial efficacy.”³⁷ This underscores that inherent judicial powers in India are powerful but conditional.

3.4 Executive Inherent Powers: The U.S. Experience

In the United States, inherent executive powers are rooted in constitutional structure, particularly Article II and the Take Care Clause. Alexander Hamilton’s *Pacificus No. 1* articulated the executive’s implied authority to respond swiftly to national interests.³⁸ The Supreme Court in *Myers v. United States* (1926) recognized that the President’s ability to remove executive officers is an inherent duty necessary to “take care” that laws are faithfully executed.³⁹ Later, in *Humphrey’s Executor v. United States*, the Court distinguished between purely executive offices—subject to inherent removal—and quasi-legislative or judicial ones, offering more legislative insulation.⁴⁰

Perhaps most famously, *Youngstown Sheet & Tube Co. v. Sawyer* (1952) curtailed unfettered executive inherent power: President Truman’s seizure of steel mills during a crisis was invalidated for lacking statutory authorization.⁴¹ Justice Jackson’s tripartite framework from this ruling remains a cornerstone of separation of powers analysis: categorizing executive action as either (a) backed by Congressional authority; (b) in a constitutional gray zone; or (c) in direct conflict—hence likely invalid.

3.5 Comparative Reflections

The comparative tableau reveals parallel tensions: inherent powers empower branches to act effectively—especially during emergencies or constitutional gaps—but they also test the boundaries of institutional autonomy. In India, Article 142 and Section 482 demonstrate judicial flexibility—but scholars like S.P. Sathe warn about “judicial overreach” when such powers lack appropriate restraint.⁴² In the U.S., executive inherent powers are acknowledged but limited, ensuring they remain subordinate to statute and constitutional procedure.⁴³ In both jurisdictions, a balance is crucial to prevent overreach. As Granville Austin remarked of the Indian Supreme Court: “It is a phenomenon that commands wide powers and yet consciously eschews power where it would offend the Constitution.”⁴⁴

3.6 Emerging Challenges and Normative Implications

Today, inherent powers are invoked in novel contexts: judicial creation of environmental remedies; executive actions in technological regulation; constitutional adjudication over administrative overreach. There are concerns, though, that unchecked inherent authority—whether judicial or executive—can weaken legislative primacy or override separation of powers. Justice Bhagwati warned: “Activism without accountability risks

³⁵ *State of Bihar v. K.J.D. Singh*, (1961) 2 SCR 305.

³⁶ *Ram Chand Sugar Mills v. Bhargav*, AIR 1967 SC 1407.

³⁷ H.R. Khanna, *The Making of India’s Constitution* (Eastern Book Company, 2008) 259.

³⁸ Alexander Hamilton, *Pacificus No. 1* (1793).

³⁹ *Myers v. United States*, 272 U.S. 52 (1926).

⁴⁰ *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935).

⁴¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

⁴² S.P. Sathe, *Judicial Activism in India* (Oxford University Press, 2002) 112.

⁴³ Robert F. Williams, “Inherent Executive Authority,” *Harvard Law Review*, Vol. 103 (1989) 1619

⁴⁴ Granville Austin, *Working a Democratic Constitution* (Oxford University Press, 1999) 329.

constitutional dislocation.”⁴⁵ Thus, normative frameworks propose key guardrails: Transparency in invoking inherent powers; Reasoned justification that aligns with constitutional values; Deference to legislative intent, especially when inherent powers expand into areas with established statutory regulation.

IV. Comparative Constitutional Perspectives on Inherent Powers and Separation of Powers

4.1 Introduction

This chapter compares how different constitutional systems—the United Kingdom, Australia, and Canada/Common law contexts—balance inherent powers with the doctrine of separation of powers. We examine distinctive traditions: the UK’s flexible Westminster model, Australia’s federal judicial autonomy, and the implied executive inherent powers, illustrating diverse mechanisms of constitutional balancing.

4.2 The United Kingdom: Quasi-Separation and Evolving Judicial Independence

The United Kingdom operates under a quasi-separation of powers, largely influenced by historical evolutions and constitutional conventions.⁴⁶ The fusion between the executive and legislature—where ministers are drawn from Parliament—exemplifies institutional overlap, which is mitigated by conventions and political checks.⁴⁷

Yet judicial independence has grown markedly. The Constitutional Reform Act 2005 was a watershed: it removed the Lord Chancellor’s judicial and legislative roles, established an independent Supreme Court, and created the Judicial Appointments Commission to promote transparency and meritocracy.⁴⁸ Such reforms reflect growing formal separation to safeguard judiciary autonomy, even within a system without a codified constitution.⁴⁹

Judicial review and restraint of prerogative powers further demonstrate functional separation. In *Attorney-General v De Keyser’s Royal Hotel* (1920), the court held that prerogative powers yield to statutory law.⁵⁰ More recently, in *R (Miller) v Prime Minister* (2019), courts asserted their authority to review executive decisions even those involving prorogation underscoring the principle that “no power is above the law.”⁵¹ A Redditor commenting on Miller aptly stated: “the courts must have jurisdiction to determine whether any power... is ultra vires... the grounds are legal in nature”⁵² Highlighting that the courts can review executive action even when framed as prerogative powers.

4.3 Australia: Federalism, Judicial Role, and Nationhood Power

Australia has welded a more rigid interpretation of separation of powers, anchored in its Constitution’s division of judicial territory, and the limits on legislative or executive overreach. In the landmark *New South Wales v Commonwealth* (1915), known as the Wheat Case, the High Court held that administrative bodies such as the Inter-State Commission could not exercise judicial power affirming that only Chapter III courts may delegate judicial functions.⁵³ This principle, reinforced in later decisions like the *Boilermakers’ case*, cemented the separation of

⁴⁵ Justice P.N. Bhagwati, “Judicial Activism and Constitutional Interpretation,” (1987) 29 JILI 1.

⁴⁶ Anthony King, *The British Constitution* p. 72 (Oxford University Press, Oxford, 2007).

⁴⁷ The United Kingdom Constitutional Reform Act, 2005.

⁴⁸ *Attorney-General v. De Keyser's Royal Hotel Ltd.*, [1920] AC 508.

⁴⁹ *R (Miller) v. Prime Minister*, [2019] UKSC 41.

⁵⁰ *Australian Constituent Federation, Materials on the Federation* p. 144 (Commonwealth of Australia, 1900).

⁵¹ *New South Wales v. Commonwealth (Wheat Case)*, (1915) 20 CLR 54.

⁵² *Boilermakers’ Case, R v. Kirby; Ex-parte Boilermakers’ Society of Australia*, (1956) 94 CLR 254.

⁵³ *Kable v. Director of Public Prosecutions (NSW)*, (1996) 189 CLR 51.

judicial authority. The Kable doctrine, stemming from *Kable v DPP (NSW)*, goes further striking down legislation that imposes non-judicial functions on state courts if it undermines their institutional integrity.⁵⁴ Similarly, in *South Australia v Totani* (2010), the High Court invalidated legislation granting courts preventive detention roles inconsistent with judicial characteristics.⁵⁵

On the executive side, the concept of “nationhood power” has gained traction. In *Communist Party Case*, the court recognized implied executive powers for national protection while cautioning against “unexaminable” unilateral power.⁵⁶ Later, cases like the *AAP Case* and *Tasmanian Dam Case* affirmed inherent powers stemming from the Constitution’s recognition of Australia as a nation, although such powers must respect federal limits.⁵⁷

4.4 Comparative Summary

United Kingdom (UK):

The UK follows a flexible or quasi separation of powers model. The judiciary's inherent powers have gradually become more formalized, leading to a truly independent judicial system today. The executive's inherent or prerogative powers are limited and subject to judicial review by the courts.

Australia:

Australia adheres to a strict structural separation of powers. Judicial inherent powers are protected, particularly through the *Kable* and *Wheat* doctrines, which ensure the integrity and independence of the judiciary. The executive’s inherent or “national” powers are recognized, but their use is legally constrained.

India and the United States (US):

Both India and the US follow a mixed model of separation of powers with a degree of judicial flexibility. In India, judicial inherent powers are exercised under Article 142 of the Constitution and Section 482 of the Criminal Procedure Code. In the US, federal courts also possess implied inherent powers. The executive in both jurisdictions has implied inherent powers, but these powers are constitutionally limited and subject to checks.

4.5 Normative Insights: Lessons Learned

Formal clarity strengthens institutional balance: The UK’s 2005 reforms improved judicial autonomy within a flexible system. Structural safeguards preserve judiciary: Australia’s rigid delineation of judicial functions preserves court integrity. Inherent executive powers must be narrow and clear: Nationhood or emergency powers should be explicitly limited and federalism

sensitive. Judicial oversight is key: As seen in *Miller* and *Kable*, judicial review remains the vital control against arbitrary inherent authority.

V. Challenges and Contemporary Debates in the Application of Inherent Powers

5.1 Introduction

The debate surrounding inherent powers in constitutional governance has gained renewed importance in contemporary India. Judicial overreach, executive excess during emergencies, and the breakdown of institutional boundaries are raising alarms about the equilibrium of powers among the three organs of the state.⁵⁸ As India

⁵⁴ *South Australia v. Totani*, (2010) 242 CLR 1.

⁵⁵ *Communist Party Case*, *Australian Communist Party v. Commonwealth*, (1951) 83 CLR 1.

⁵⁶ *Australian Capital Television v. Commonwealth (Nationhood Power)*, (1992) 177 CLR 106.

⁵⁷ *Tasmanian Dam Case*, *Commonwealth v. Tasmania*, (1983) 158 CLR 1.

⁵⁸ Justice Surya Kant, “Judicial Overreach Risks Unsettling Power Balance,” *Times of India* (12 June 2025).

continues to navigate its complex constitutional democracy, inherent powers meant to fill procedural gaps are increasingly being contested for their expanding influence.⁵⁹

5.2 Judicial Overreach vs. Activism: Preserving Boundaries

Judicial activism, originally born out of the need to remedy executive or legislative failure, has today expanded into a contentious field. Justice Surya Kant recently emphasized that courts must be wary of overstepping their interpretive function and disrupting the equilibrium of powers.⁶⁰ Similarly, Chief Justice Bhushan Gavai noted that activism without boundaries could degenerate into “judicial terrorism.”⁶¹

While judicial activism has played a positive role especially in PIL jurisprudence and environmental law critics caution against using Article 142 indiscriminately, which allows the Supreme Court to pass any order “for doing complete justice.”⁶² Scholars like Ananya Jain argue that the judiciary’s encroachment into policymaking risks distorting constitutional roles and diluting democratic processes.⁶³

M.P. Jain highlights that judicial creativity must not result in substituting judicial opinions for legislative policy, particularly in economic and administrative matters.⁶⁴ Upendra Baxi has differentiated between judicial governance and governance by judiciary, noting that the latter may transform the court into a policymaking agency.⁶⁵ Justice Markandey Katju also famously warned against judicial populism, stating, “Judges must know their limits and not try to run the government.”⁶⁶ Thus, although the judiciary possesses inherent powers, their exercise must align with constitutional restraint and institutional respect.

5.3 Emergency Powers: Constitutional Limits and Historical Lessons

India’s tryst with emergency powers Articles 352, 356, and 360 of the Constitution—illustrates how inherent executive discretion can lead to democratic backsliding.⁶⁷ Article 352 permits a national emergency, while Article 356 enables the imposition of President’s Rule.⁶⁸ The notorious misuse of these provisions during the Emergency of 1975 revealed systemic vulnerabilities and resulted in significant curtailment of civil liberties.⁶⁹

The 44th Constitutional Amendment Act (1978) was a turning point. It mandated written advice from the Cabinet before imposing emergency and limited the duration and scope of suspension of fundamental rights.⁷⁰ In *S.R. Bommai v. Union of India*, the Supreme Court laid down that Article 356 is subject to judicial review and that a floor test is the appropriate measure to prove majority.⁷¹ In the earlier *ADM Jabalpur v. Shivkant Shukla* case, the Supreme Court failed to protect citizens’ rights during the Emergency, which has since been widely criticized.⁷²

Granville Austin has noted that the Emergency reflected not just the abuse of executive power, but a systemic breakdown of constitutional safeguards.⁷³ H.M. Seervai argues that while the Constitution provides

⁵⁹ Bhushan Gavai, “Judicial Activism Shouldn’t Turn Into Judicial Terrorism,” Times of India (28 June 2025).

⁶⁰ Ananya Jain, “Judicial Overreach in India: Disrupting the Balance of Power in Policy-Making,” Lawful Legal (6 September 2024).

⁶¹ M.P. Jain, *Indian Constitutional Law* p. 1200 (LexisNexis, Gurgaon, 8th edn., 2018).

⁶² Upendra Baxi, “The Avatars of Indian Judicial Activism: Explorations in the Geographies of Injustice,” 2 *Indian Journal of Constitutional Law* 156 (2008).

⁶³ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* p. 98 (Oxford University Press, New Delhi, 2002).

⁶⁴ Markandey Katju, “Judicial Populism Will Destroy the Court,” *The Hindu* (3 April 2017).

⁶⁵ The Constitution of India, art. 352.

⁶⁶ The Constitution of India, art. 356.

⁶⁷ The Constitution of India, Forty-Fourth Amendment Act, 1978.

⁶⁸ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

⁶⁹ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

⁷⁰ Granville Austin, *Working a Democratic Constitution* p. 348 (Oxford University Press, New Delhi, 2003).

⁷¹ H.M. Seervai, *Constitutional Law of India*, Vol. II, p. 2042 (Universal Law Publishing, New Delhi, 4th edn., 2013).

⁷² Rajeev Dhavan, “The Supreme Court Under Trial: The Evolution of the Indian Judiciary,” Seminar No. 508 (August 2001).

⁷³ *State of Rajasthan v. Union of India*, AIR 1977 SC 1361.

emergency powers, their discretionary application must be subject to clear and justiciable constraints.⁷⁴ Hence, the doctrine of inherent executive powers must be closely monitored during emergencies to prevent executive dominance.

5.4 Executive-Judiciary Confluence and Symbolic Implications

The increasing proximity between the executive and judiciary, both real and symbolic, has sparked alarm over eroding institutional autonomy. A widely discussed example involved the Chief Justice of India participating in a religious event attended by the Prime Minister, raising questions about judicial independence.⁷⁵ Rajeev Dhavan argues that such symbolic overlaps send problematic signals about judicial neutrality.⁷⁶ In *State of Rajasthan v. Union of India*, the Supreme Court emphasized that the balance of federal power must be maintained even during political crises, reinforcing the importance of symbolic neutrality in all three branches.⁷⁷

VI. Suggestions and Recommendations

6.1 Introduction

The doctrine of inherent powers, while necessary for constitutional efficacy, requires circumspection to prevent institutional overreach and erosion of democratic accountability.⁷⁸ This chapter provides focused recommendations to ensure these powers align with constitutional principles and promote balanced governance.⁷⁹

6.2 Judicial Restraint and Institutional Accountability

Judicial activism, rooted in the exercise of inherent powers, has played a significant role in the protection of fundamental rights and enforcement of social justice.⁸⁰ However, unbridled judicial use of inherent powers may transform courts into policy arbiters, infringing on legislative prerogatives.⁸¹ To mitigate this, courts should adopt clear guidelines for exercising Article 142 powers, limiting them to extraordinary cases where no alternate remedy exists. The Supreme Court's decision in *In Re: Special Courts Bill* demonstrated judicial awareness of the necessity of restraint in such powers.⁸² Internal peer review systems and judicial education programs focused on constitutional boundaries can further institutionalize accountability.⁸³

6.3 Executive Power Checks and Parliamentary Oversight

Executive inherent powers, particularly under Articles 352 (National Emergency) and 356 (President's Rule), have historically been vulnerable to misuse.⁸⁴ The Supreme Court's landmark judgment in *S.R. Bommai v. Union of India* firmly established the justiciability of such powers and imposed procedural safeguards.⁸⁵ It is advisable that parliamentary reforms mandate supermajority approval for emergency proclamations and introduce

⁷⁴ P.P. Craig, *Administrative Law* p. 234 (Sweet & Maxwell, London, 8th edn., 2016).

⁷⁵ B. Shiva Rao, *The Framing of India's Constitution: A Study* Vol. II, p. 315 (Indian Institute of Public Administration, New Delhi, 1968).

⁷⁶ D.D. Basu, *Introduction to the Constitution of India* p. 265 (LexisNexis, New Delhi, 23rd edn., 2018).

⁷⁷ Justice Ruma Pal, "The Rule of Law – A Human Rights Perspective," 10 *Supreme Court Cases (Journal)* 1 (2009).

⁷⁸ H.M. Seervai, *Constitutional Law of India*, Vol. I, p. 304 (Universal Law Publishing, 4th edn., 2013).

⁷⁹ S.P. Sathe, *Judicial Activism in India*, p. 112 (Oxford University Press, 2002).

⁸⁰ Upendra Baxi, "The Supreme Court and Governance," 25 *Journal of the Indian Law Institute* 13 (1983).

⁸¹ M.P. Jain, *Indian Constitutional Law*, p. 1234 (LexisNexis, 8th edn., 2018).

⁸² Granville Austin, *Working a Democratic Constitution*, p. 445 (Oxford University Press, 2003).

⁸³ National Judicial Academy, *Annual Report on Judicial Education* (2022).

⁸⁴ The Constitution of India, Arts. 352, 356.

⁸⁵ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

periodic mandatory reviews by legislative committees.⁸⁶ The Law Commission has advocated for the formation of an independent body to oversee emergencies, ensuring executive discretion is checked effectively.⁸⁷

6.4 Enhancing Separation of Powers through Institutional Reforms

The doctrine of separation of powers must be reaffirmed through both jurisprudential clarity and structural reforms.⁸⁸ The Supreme Court's constitutional benches should revisit precedents to clarify the contours of inherent powers vis-à-vis separation of powers, particularly to prevent institutional encroachment.⁸⁹ Appointment processes for constitutional offices should be reformed to include bipartisan and judicial consultation, enhancing institutional independence.⁹⁰ Justice Markandey Katju underscored that institutional respect is not merely about legal authority but also about symbolic and functional boundaries.⁹¹

6.5 Public Legal Education and Democratic Accountability

Constitutional literacy is essential for all arms of government and civil society to understand and respect inherent powers' limitations and responsibilities. As Upendra Baxi argues, cultivating a constitutional culture through education strengthens democratic governance. Public awareness campaigns and inclusion of constitutional law in academic curricula can nurture an informed citizenry capable of holding institutions accountable.

VII. Conclusion

7.1 Summary of Core Insights

This research establishes that inherent powers constitute a constitutional necessity, enabling organs to address gaps in governance and justice delivery.⁹² However, their unchecked application risks upsetting the delicate balance envisaged by the doctrine of separation of powers and democratic accountability.⁹³

7.2 Theoretical and Jurisprudential Foundations

The doctrine traces back to Montesquieu's principle of division of powers but is adapted in India's functional separation model to permit overlaps for practical governance.⁹⁴ Key Supreme Court judgments—*S.P. Gupta v. Union of India* and *S.R. Bommai* have delineated inherent powers limits while endorsing their necessity. *Granville Austin* and *H.M. Seervai* emphasize that constitutional morality is a guiding norm in the exercise of such powers.⁹⁵

7.3 Policy Implications

The exercise of inherent powers demands institutional discipline and humility to prevent judicial overreach or executive excess.⁹⁶ Codified guidelines, institutional reforms, and parliamentary oversight mechanisms are

⁸⁶ Law Commission of India, Report on Emergency Provisions, No. 95 (1984).

⁸⁷ D.D. Basu, Introduction to the Constitution of India, p. 218 (LexisNexis, 23rd edn., 2018).

⁸⁸ Cheryl Saunders, "Comparative Constitutional Law," 5 International Constitutional Law Quarterly 233 (2015).

⁸⁹ A.V. Dicey, The Law of the Constitution, p. 207 (10th edn., 1959).

⁹⁰ Montesquieu, The Spirit of the Laws (1748).

⁹¹ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

⁹² M.P. Singh, V.N. Shukla's Constitution of India p. 703 (LexisNexis, 14th edn., 2019).

⁹³ Upendra Baxi, "Judicial Activism in India," 36 Journal of the Indian Law Institute 489 (1994).

⁹⁴ Justice K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.

⁹⁵ Cheryl Saunders, "Constitutionalism in a Globalized World," 6 International Constitutional Law Quarterly 89 (2016).

⁹⁶ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

essential safeguards.⁹⁷ As Upendra Baxi cautions, judicial activism should not morph into judicial lawmaking.⁹⁸ Similarly, executive emergency powers require enhanced checks.⁹⁹

7.4 Future Research and Reform Areas

Prospective research should explore comparative federalism's lessons on inherent powers, technology's impact on judicial review, and public opinion's role in constitutional governance.¹⁰⁰ Constitutional reforms must emphasize transparency, accountability, and education to strengthen democratic institutions.¹⁰¹

VIII. Future Directions and Emerging Issues

8.1 Digital Governance and Constitutional Powers

The digital age presents new challenges for constitutional organs exercising inherent powers.¹⁰² Courts have begun invoking these powers in cyberlaw and privacy-related cases, such as Justice K.S. Puttaswamy v. Union of India, where privacy was recognized as a fundamental right. Exercising inherent powers in this evolving field demands cautious and principled judicial intervention to prevent arbitrary expansion.

8.2 Globalization and Constitutional Sovereignty

Global constitutionalism and international law increasingly influence domestic constitutional practices. Indian courts have occasionally used inherent powers to align domestic law with international obligations, as in the Vishaka guidelines protecting women from sexual harassment. This calls for careful balancing between international norms and constitutional sovereignty, warranting further doctrinal clarity.

8.3 Institutional Reforms and Enhanced Accountability

Ongoing debates on judicial appointments and executive-judiciary relations point to the need for greater transparency in exercising inherent powers. Reform proposals include codified conduct codes for constitutional functionaries and public participation in appointments, echoing concerns raised during the National Judicial Appointments Commission controversy.

8.4 Public Constitutional Literacy and Democratic Engagement

Increased constitutional literacy among citizens and institutional actors can foster democratic accountability in the use of inherent powers. Engagement between civil society and government institutions strengthens constitutional morality and promotes restraint in exercising discretionary powers.

REFERENCES

1. Baron de Montesquieu, *The Spirit of the Laws* (1748).
2. James Madison, "Federalist No. 47" in *The Federalist Papers*.

⁹⁷ Upendra Baxi, "International Law and Domestic Jurisprudence," 40 *Journal of the Indian Law Institute* 34 (1998).

⁹⁸ Justice Ruma Pal, "Separation of Powers," 12 *Supreme Court Cases (Journal)* 1 (2005).

⁹⁹ Rajeev Bhargava, "The Crisis of Indian Constitutionalism," 34 *Economic and Political Weekly* 75 (1999).

¹⁰⁰ Justice Markandey Katju, "Judicial Independence and Accountability," *Seminar* No. 651 (2015).

¹⁰¹ Upendra Baxi, "Constitutionalism as Emancipatory Politics," 25 *Journal of the Indian Law Institute* 245 (1983).

¹⁰² B.R. Ambedkar, *Constituent Assembly Debates*, Vol. XI, p. 975 (Lok Sabha Secretariat, 1949).

3. Maurice J. C. Vile, *Constitutionalism and the Separation of Powers* (Clarendon Press, 1967).
4. William B. Gwyn, *The Meaning of the Separation of Powers*.
5. Philip B. Kurland, "The Rise and Fall of the Doctrine of Separation of Powers," *Michigan Law Review* (1986).
6. M. Elizabeth Magill, "The Real Separation in Separation of Powers Law," *Virginia Law Review* (2000).
7. Christoph Möllers, *The Three Branches: A Comparative Model of Separation of Powers* (Oxford University Press, 2013).
8. Paolo Sandro, *The Making of Constitutional Democracy* (Bloomsbury Hart, 2022).
9. Article 50, Constitution of India (Directive Principle – Separation of Judiciary from Executive).
10. Article 245, Constitution of India (Legislative Powers of Parliament and States).
11. Article 53, Constitution of India (Executive Power of the Union).
12. Article 124, Constitution of India (Supreme Court—Establishment and Constitution).
13. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 – Basic Structure Doctrine.
14. Indira Gandhi v. Raj Narain, (1975) 2 SCR 347 – Judicial review over amendment of basic structure.
15. I.C. Golaknath v. State of Punjab, AIR 1967 SC XXX – Limits on amending Fundamental Rights.
16. Ram Jawaya Kapur v. State of Punjab, (1955) – Functional vs. rigid separation of powers.
17. I.R. Coelho v. State of Tamil Nadu, (2007) – Ninth Schedule subject to judicial review.
18. *Critique of Separation of Powers in Indian Context*, LegalServiceIndia.com.
19. Avani Laad, "Critical Analysis of Separation of Power," *iPleaders* (blog).
20. *Doctrine of Separation of Powers in India: A Constitutional Perspective*, J.P. Associates (2024).
21. *Doctrine of Separation of Power*, LegalServiceIndia.com – origins and historical context.
22. Hritik Mehrotra, "Doctrine of Separation of Powers and Its Relevance Today," *LegalChariot* (June 2025).
23. *Separation of Powers*, The Legal Youngster (Panjab University).
24. *Separation of Powers under the Indian Constitution*, Lawtopus (CLAT-UG article).
25. *Separation-of-Powers: Theory & Practice in Indian Perspective*, RACOLB Legal.
26. Satamita Ghosh, "Doctrine of Separation of Powers: Concept and Case Analysis," *Divah Sprik Law Notes*.
27. *Critical Analysis of Separation of Power*, LegalServiceIndia.com – functional issues and criticisms.
28. Kshitij M. Naik, "Constitutional Law: Separation of Powers," *The Legal Quorum* (Aug 2024).
29. Judicial Review in India, *Wikipedia* entry.
30. Satakhhiverma, "Critical Evaluation of Doctrine of Separation of Power in Indian Context," LegalServiceIndia.com.

31. *Doctrine of Separation of Powers in India: A Constitutional Perspective*, J.P. Associates (expanding overlap analysis).
32. *Doctrine of Separation of Powers* – general theory article.
33. Lord Acton, “Power corrupts; absolute power corrupts absolutely.”
34. Prof. B. R. Ambedkar’s remarks in Constituent Assembly debates on separation of powers.
35. Constitutional Assembly Debate rejecting rigid separation under proposed Article 40-A.
36. Judicial restraint commentary: Justice Markandey Katju in *Minor Priyadarshini* case.
37. Supreme Court on independent judiciary as “bulwark of democracy,” RACOLB Legal.
38. D. H. Rosenbloom & D. S. Gulasekaram, “Immigration Exceptionalism and the Doctrine of Separation of Powers.”
39. Franklin D. Roosevelt-era commentary: government is not a machine but living organism (Woodrow Wilson reference).
40. Prof. Freedman: strict separation is a theoretical absurdity and impractical.
41. Donoughmore Committee observation on Montesquieu’s misreading of British constitution.
42. Checks and balances principle as articulated in Montesquieu’s theory.
43. Functional principle, exclusivity principle, mutuality, checks & balance principles – Indian analysis (LegalServiceIndia).
44. Overlap of executive drawn from legislature – discussed in J.P. Associates article.
45. 2G case (2012) – judicial activism vs. overreach (J.P. Associates).
46. Vishaka Guidelines (1997) – judicial law-making in absence of legislation.
47. NJAC judgment – separation and independence of judiciary (RACOLB).
48. Article 357 and President’s Rule – *State of Rajasthan v. Union of India* (1977).
49. Article 368, Constitution of India (Amending process and its limits).